(Inlexso Innovative Legal Services) hvr

IN THE HIGH COURT OF SOUTH AFRICA

GAUTENG DIVISION, PRETORIA

CASE NO: 45361/2021

DATE: 2021-09-14

DELETE WHICHEVER IS NOT APPLICABLE
(1) REPORTABLE: ~~YES~~ / NO
(2) OF INTEREST TO OTHER JUDGES : ~~YES~~ / NO
(3) REVISED

In the matter between

JAN HENDRIK STEPHANUS VENTER Applicant

and

ABSA BANK GROUP

AND SEVEN OTHERS Respondents

J U D G M E N T

(EX TEMPORE)

VAN DER WESTHUIZEN, J: In matter 45361/21 the applicant brought an application, on notice of motion, on short notice, against various parties. The matter was enrolled on the urgent court roll that would commence on the 14th of September 2021.

When the roll was published and allocations made, this matter was allocated to me and on my instructions, my registrar published those applications to be heard by me during the course of this week and it was clearly indicated that the matters would be heard in open court. That indication and publication set the cat among the pigeons. I shall deal with those events in due course.

It is appropriate and prudent to record the application, in particular the notice of motion which, unfortunately, I am obliged to quote comprehensively. It reads as follows:

> "In the High Court of South Africa,
> Gauteng Local Division North, Pretoria,
> Rule 6(12) and Rule 40, punitive costing order.
> Case number 45361/21.
> Jan Hendrik Stefanus Venter, first applicant,
> and Absa Bank Group, first respondent,
> CEO BSA Bank, second respondent,
> First National Bank, third respondent,
> CEO First National Bank, fourth respondent,
> Nedbank Group, fifth responded,
> CEO Nedbank Group, sixth responded,
> Bark.Com South Africa, seventh responded,
> Ms Vos, eight responded."

Thereafter, it follows:

> "NOTICE OF MOTION

BE PLEASED TO TAKE NOTICE THAT application will be made on behalf of the above-named Applicant on Tuesday, 14 September 2021, at 10h00, or so soon

Thereafter as the Applicants may be heard for an order in the following terms:

1. That the rules relating to form, service and time periods be dispensed with and this application be heard as an urgent application, as provided for in 6(12) of the Uniform Rules of Court, as well as Rule 40 Punitive Costing Order.

Reasons for urgency:

(1) As livelihood must always be seen as urgent and person well-being and numerous things like.

(2) Loss of income is loss of lively Hood.

(3) Loss of income due to Slander makes it even worse."

The second heading:

NOTICE OF MOTION

"1. Respondents 1 up to respondent 6 has blocked my Business accounts without any valid reason.

2. The above-mentioned Respondents did this just on the word of a slanderer, Respondent Eight.

3. The Constitution of South Africa clearly states

a person is innocent until proven guilty.

4. Respondent 7 of whom I was a client took thousands of Rands of mine just to believe false allegations against me.

8. Respondent 8, as the annexure will clearly show, did not abide by the terms and conditions of the quotation.

9. It affects my life directly and tremendously.

10. It caused me as Annexure JV2 and Jv3 will show, a loss of income.

11. The Annexure's will clearly Show the Honourable court that this is just a fraction of my losses, as I am not including all the clients that cancelled.

12. In addition, Annexure JV4 and JV5 will Show the Honourable Court that we have given Refunds in the past without any problem and this should proof to the court that if the Sole Proprietor is a "fraud" there would never have been Refunds given not even one.

13. That the Respondent 1 to 6 had no right to freeze bank account without hearing both versions, it was a malicious act from all the Respondents that cost us our livelihoods.

14. It was Slanderers, to put it lightly from

Respondent 7 and Respondent 8 and they cost us a small fortune in revenue.

15. That's why we are also asking for a Punitive Costing Order as rule 40 allows we have lost in Access of R100 000 in revenue due to un substantiated allegations.
16. Also as Annexure JV5 Will, show how clients tried to Transfer money.
17. How can Respondent 8 Allege Fraud if she did not adhere to the terms and conditions on the quotations and paid the installation quoted
18. She only paid 50%, and this already at a discounted price, and she excepted our terms and conditions.
19. I put it to the Honourable Court that all the Respondents broke the law in one form or another the Respondents 1 to 6 because they froze bank accounts without any court order, Respondent 7 because they Slandered our good name and when people accused the company of alleged Fraud, they believe them, then worst of all, Respondent 8 that clearly had the terms and conditions in front of her was never fort to accept the quotation and she did but with her own rules and regulations and not

our terms and conditions.

20. That lastly due to these Respondent actions they have costed many people lively hoods, jobs, and caused us a huge amount of financial loss, this come down to Slander Defamation of character in the worst sense of the word.

TAKE NOTICE FURTHER THAT if the Respondent intend opposing the relief sought in this application, you are required:

a) To notify the Applicants' in writing of your intention to oppose by no later 10 September 2021, than 20:00.

Affidavit, if any; and

c) If no such notice of intention to oppose or answering affidavit is provided within the stipulated periods referred to above, then an application will proceed on an unopposed basis.

Please can I ask the Honourable court to hear the motion on 10 September 2021 or as soon as possible thereafter? Due to my working schedule and Due to the lock down and moving around to do the case remotely

I also ask the honourable court to hear the motion via remote link.

3. I pray to the honourable court the following:

1. That the Respondent 1 to 6 to un freeze my bank accounts at once and it be made an order of the court.
2. That the Respondents 7 and 8 pays Punitive costs for suffering to the value of R500 000 due to my loses.
3. That respondent 7 Immediately removes all defamatory comments from there web site.
4. That Respondent 7 pays Back R10 000 that we have paid for their services immediately and it gets made an order of court.
5. That respondents 1 to 8 Publishes a Public apology in the tabloids.

   I am sending a Draft of my application to Respondents so they are aware that this application will be brought.

KINDLY PLACE THE MATTER ON THE ROLL FOR HEARING ACCORDINGLY

TO: THE REGISTRAR OF THE ABOVE HONOURABLE COURT,
HIGH COURT GUTENG DIVISION NORTH PRETORIA
EMAIL ADRESS;

Served on all Respondents on Tuesday 7 September 2021 by means of electronic email asper directives.

IN ADDITION, TO: All respondent via email and whatsups

Applicant for himself

JHS Venter

Email address "[...]

Contact no [...]."

I need not record the founding affidavit in detail. It merely reads on to what is contained in the quoted notice of motion. Save to record that none of the parties are specifically cited in the founding affidavit, nor any detail or precise detail being set out. Which makes it more curious, is that there is no allegation in the founding affidavit, nor in the notice of motion, why the second, fourth, and sixth respondents are cited. Those being the various CEOs of the three banks that are cited.

There is no detail as to the status of the seventh respondent. The name indicating presumably a website in South Africa. Neither are any details given of the 8th respondent, other than the allegations that are contained in the notice of motion and the affidavit.

It bears no dissection nor scrutiny other than it to be gleaned from the notice of motion that an inappropriate, incomplete application was brought. Furthermore, the affidavit does not intend to supplement the glaring omissions that ought to have been included. There is no indication in the application, whether in the notice of motion or the founding affidavit, what accounts are held by the applicant with any of the three main banks cited. Merely considering the application, without considering opposing and answering affidavits, there is no possibility that this alleged application could muster any of the requisites set for an interdict and in particular a *mandamus* as this application proffers to be.

Furthermore, it being a *mandamus*, it is final in effect. There is no indication or explanation provided why this application should be entertained by the Court, less to say on an urgent basis. The only allegation of urgency is what I have recorded, where in the preamble of the notice of motion it is indicated that it is merely a livelihood and well-being, due to alleged slander. That is not a basis for this Court to hear an application on an urgent basis.

The Courts have made it clear what allegations are to be made to convince a Court why there should be a relaxing of the requisites for the hearing of a matter, other than in the normal course of events. In particular, where an alleged punitive costing order is sought, it is clearly a basis, or a

possible basis for a claim for damages. There is no indication how the amount of a R100 000 is made up, nor how the amount of R500 000 is to be made up.

It is not discernible whether both the seventh and eight respondents are to pay jointly the R500 000, or jointly and severally. This application lacks any basis required of an application to be entertained by a Court.

Having recorded that, the matter did not end there. Although the notice of motion appears to read that the application will be moved on the 14th of September 2021, there is a subtle, sleight of hand at the end of the notice of motion, where the Court is requested to hear the matter and to grant the relief on the 10th of September 2021.

Presumably, where the respondents are awarded until eight o'clock in the evening on the 10th of September to file an indication whether they intended to oppose the application and to file an affidavit, the Court would have to consider this application one minute after eight o'clock, in the evening on Friday, the 10th of September 2021. It is inferred from the tenner of the notice of motion and supporting affidavit that the applicant is to be granted relief at any cost.

Considering the answering affidavit filed on behalf of the respondents, it is clear that the respondents, the banks in particular, had acted within their rights and had acted reasonably and with the utmost caution. No bank accounts

were frozen, as one would understand that term to imply. A hold was put on the accounts by Absa Bank on the receipt of a flag of possible fraudulent action. The hold simply implied that money could still be deposited into the accounts, but could not be transacted out of those accounts. A period of approximately 48 hours was endured where transactions could not be effected out of the accounts.

It is also to be gleaned from the affidavit on behalf of Absa Bank and its CEO, that the applicant had requested the bank to close his bank accounts. That instruction was accepted, but the applicant was advised that the overdrawn facilities on the bank accounts should be rectified before the accounts could be closed. This instruction was given prior to the launch of this application.

In respect of the Nedbank accounts, it is clear from the affidavit filed in opposition and in answer that at most a hold, in a sense as already recorded earlier, was placed on the accounts of the applicant, following the red flag passed on by Absa Bank. Nedbank was fully within its rights to investigate the allegations with reference to the accounts held by the applicant with it. At most, that endured for 24 hours.

The hold was uplifted prior to the launch of these proceedings. The banks have indicated that they had difficulty in contacting the applicant and the only opportune time that they could contact the applicant, was after the application had

been launched and the matter had been enrolled.

In respect of the eighth respondent, it is clear from her answering affidavit that she had surfed the web to obtain services for the installation of security cameras. She had completed a questionnaire and soon thereafter she was contacted telephonically by the applicant, who provided a quote, without investigating the situation or the premises where the security cameras were to be installed. She was asked to pay a deposit which was half of the quoted amount.

Subsequent thereto, after paying the deposit into the dedicated account, a second person contacted her to make arrangements for the installation a couple of days later. On the appointed date nothing happened, nor thereafter. The eighth respondent attempted to contact either of the two persons at any of the numbers available, and she was unsuccessful in that regard.

Due to the large and widespread fraud that has gripped this country, the eighth respondent contacted her bank, Absa Bank, the same bank at which the dedicated account that was held and into which she deposited the monies, for assistance and that set everything in motion. The question is whether that action on the part of the applicant was unreasonable.

It is to be recorded that to this day the services had not been rendered, neither has the equipment been delivered, but for this application to extort a huge amount of alleged

damages.

The allegations relating to the seventh respondent cannot be considered. There is no detail of what or who the seventh respondent is, what the legal status thereof is. There is nothing. There is a further issue that requires consideration and recording. Soon after the roll for this week was published on Friday the 10th of September 2021, my registrar was inundated with calls, emails, and WhatsApps from the applicant, attempting to squirm out of the application by insisting that the matter be heard on a virtual platform.

Various reasons were offered why that is to be done. Those emails, calls, and WhatsApps continued throughout the weekend and even during the course of yesterday. Those emails were shared with all and sundry. The applicant seems to be under the impression that an applicant can dictate to the Court how the Court is to function and what it should do and how it should be accommodating people.

It is pointed out by counsel on behalf of the respondents that the consolidated practice directive, which appeared during June this year, consolidating all the other practice directives that were issued following on the pandemic, indicating what measures can be set in place to accommodate and to prevent a possible spread of the Covid-19 virus. Throughout all those directives and as confirmed in paragraph 4.3 of the most recent consolidated practice directive, it was left within the

discretion of the Court whether to hear matters in the open court or on some other platform.

I further record that since the initial lockdown up until to date, I have sat in open court without any comment from parties, without any censure from the powers that be. This country has moved up and down the levels and as recent as the past week there was a further relaxation in respect of the regulations. This country has moved from a total lockdown to a general, albeit some controlled manner of functioning. There is no basis why this application cannot be heard in open court. In particular, if one has regard to the notice of motion where the applicant clearly indicated that he cannot attend court because of his own business and of the lockdown. The latter presumably required to hear the application after the curfew applied. The lockdown does not affect sitting in open court. The business of the applicant cannot be so that he cannot attend court.

Subsequently, when the applicant realised that he cannot dictate to the Court how and when the matter should be heard, he reverted to other problems, which presumably relates to his health. How that can affect coming to court is not clear. No detail is set out in the application. No supplementary affidavit indicating the issues or providing the required medical certificate to that effect.

Considering the application as a whole, and in particular

in the context of what the respondents say, none of which has been gainsaid in a replying affidavit, the applicant seeks to hold all to ransom. The Courts must jump to his simple whims. The respondents are to pay damages and jump to his simple whims. There is no basis on which the relief, in so far as that can be gleaned from the notice of motion, or ascertained there from, can be granted.

Glancing at the draft order that had been uploaded to Caselines by the applicant, it is clear that the applicant does not understand the legal principles to be applied, nor in what manner relief can be granted on application, and in particular in respect of an urgent or so-called urgent application. In the absence of any indication of which business accounts were 'frozen', this Court cannot give an order that would have any effect that could be put in place. There is no basis to support a claim for damages without any detail, other than a bald averment that he had been slandered.

On behalf of the respondents it was submitted that this application ought not to be struck from the roll for want of urgency but to be dealt with on the merits. That submission presumably is made on the premise that the applicant sought that if this matter cannot be heard on a virtual platform this week, it is to be stood down 'to next week or a later date'. That indication is a clear indication that this matter cannot be urgent. If the matter is merely to be struck from the roll,

nothing prevents the applicant from re-enrolling this matter in other courts until a “sympathetic” Court may be found. “Sympathetic” is used in the context of a euphemism.

There is no merit in the application as it stands, without considering what the respondents have placed before Court. This matter cannot be entertained. It is an improper application and is nothing other than an abuse of process. Prior to the launch of this application, he had given instructions to Absa Bank to close his accounts. Nedbank had clearly not completely frozen his accounts and were in fact ‘unfrozen’ when the application was launched. There was nothing to support his applications, well within the knowledge of the applicant. He, nevertheless, pressed on.

It, in my view, is in the interest of justice and in the public interest that this matter be dealt with on the merits. As already recorded, there is no merit in the application and it stands to be refused.

A further issue to be recorded is the fact that an applicant, when it seeks an indulgence to have the matter postponed, a full and satisfactory reason or reasons ought to be stated and clearly indicated and it is to be done timeously. This was restated by the Constitutional Court in *Lekolwane and Another v Minister of Justice and Constitutional Development* 2007 (3) BCLR 280 (CC) 23 November 2006, at para [17].

Considering the issue of costs, counsel on behalf of the

respondents are *ad idem* that the applicant is not only to be mulct with costs but to be mulct with a punitive cost order. First and foremost, the arrogance shown by the applicant and disregard of the rules and the authority of the Court in having his application being dragged across the courts until a satisfactory result is obtained, but also in view of the abuse of process followed by the applicant.

This abuse of process, not only in the manner in which the application has been drafted, but in the manner it has been presented and enrolled. I have already dealt with the issue of urgency. I have already dealt with the issue of the unmeritorious application and the disregard of other principles and rules applicable.

In my view, this Court is obliged to reprimand the applicant for the approach he has taken in this matter. It was indicated during the course of yesterday that the applicant would not attend court today, but would merely sit in front of his computer waiting to participate. That disregard of the Court's ruling as to the manner in which this application would be heard requires sanction.

I find support for my views in a passage quoted from *Alluvial Creek Limited* 1929 (CPD) 532 at 535, presented by counsel for the fifth and sixth respondents.

As already recorded, there are no allegations why the various CEOs have been cited. At least those would be

entitled to their costs without having to be out of pocket. In view of the fact that an unmeritorious application was brought and also in an inappropriate manner, the applicant should be sanctioned with a punitive cost order. I grant the following order:

ORDER

1. The application is dismissed.
2. The applicant is to pay the costs of the opposing respondents on an attorney and client scale.

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VAN DER WESTHUIZEN, J

JUDGE OF THE HIGH COURT

DATE: .....