

REPUBLIC OF SOUTH AFRICA



IN THE HIGH COURT OF SOUTH AFRICA

GAUTENG DIVISION, PRETORIA

CASE NO: 34976/21

(1) REPORTABLE: NO
(2) OF INTEREST TO OTHER JUDGES: NO
(3) REVISED: NO

Date: 20 May 2022

E van der Schyff
E van der Schyff

In the matter between:

DARREN SAMPSON

APPLICANT

and

DEPARTMENT OF JUSTICE AND CONSTITUTIONAL
DEVELOPMENT

FIRST RESPONDENT

ROCHELLE MAISTRY

SECOND RESPONDENT

NATIONAL DIRECTOR OF PUBLIC PROSECUTIONS

THIRD RESPONDENT

JUDGMENT

Van der Schyff J

Introduction and background

- [1] In a notice of motion dated 15 July 2021, the applicant seeks relief against the respondents in three parts (the main application).
- [2] In order to understand the relief sought by the applicant in the main application, it is necessary to have regard to the notice of motion itself. In Part A of the application the applicant seeks that:
- i. A warrant of arrest be issued by the National Prosecuting Authority (the NPA) against the second respondent (Ms. Maistry) 'under cas number 648/06/2020 Johannesburg Magistrates Court for the charges of contempt of court order handed down by Judge Collis on 28 January 2020 under Pretoria case number 93775/19 in the Pretoria High Court';
 - ii. 'Transfer of the criminal docket under cas number 648/06/2020 from the Johannesburg Magistrates Court to the Pretoria High Court for the trial to take place before a Judge in the above Honourable Court for contempt of the court order handed down by the Honourable Justice Collis under case number 93775/19 before above Honourable Court;
 - iii. Requesting all and any persons in the employ of the Respondent to produce evidence of any and all criminal wrongdoing in the Applicant aiding and abetting Ms. Rochelle Maistry in contravention of the court order handed down by Judge Collis in paragraph (i) above as stated in the Respondents' founding affidavit under case number 34622/16 in the Johannesburg Court;
 - iv. Compelling a sworn answering affidavit from the Solicitor-General Advocate Fhedzisani Pandelani to set out in detail all and any criminal misconduct of the Applicant in the abovementioned instance;
 - v. Providing compelling reasons why the Applicant's PAIA and PAJA (in particular Section 5(3) of the aforesaid act) request were either failed, refused or ignored by the Respondent;
 - vi. Costs on attorney and own client scale and/or in the alternative costs de bonis propriis.'

In Part B of the application the applicant seeks:

- i. 'A declaratory order that the Solicitor-General has failed in his mandate to oversee all functions of the office of the State Attorney mainly litigation strategy more in particular contravention of Section 6(30)(a)(iii) of the Promotion of Administrative Justice Act 3 of 2000 and the Applicant's right to information in terms of Section 33 of the Constitution has been infringed including the Applicant's right to human dignity in terms of Section 10 of the Constitution (*sic.*);
- ii. That a report should be submitted in the event that the Solicitor-General opposes the declaratory order in paragraph (i) above pertaining to the gross misconduct of the Respondent State Attorneys;
- iii. Sworn affidavits from the Deputy Information Officer of the Magistrates Commission, Public Services and Administration and the Respondent's pertaining to the failure, refusal and neglect of the State Attorney in providing the information to the applicant in terms of the Applicant's PAIA request;
- iv. A declaratory order and/or sworn affidavit setting out the reasons complaints why the Solicitor-General failed, refused and/or neglected to investigate gross misconduct in terms of crimen injuria, Section 9 of the Commissioner of Oaths Act, section 6 of the Public Services Act 1994 (by persons who wilfully and /or negligently) withheld documents in pursuance of the protection of the Applicant's rights in terms of Section 33 of the Constitution and contravention of the Legal Practice Act;
- v. Costs on attorney and own client scale and/or in the alternative costs de bonis propriis.'

In part C of the application the applicant seeks an order that 'in the event that the prayers are granted in Part A and B, a return date be provided within five court days for the payment of costs of the application and a directive issued for the Taxing Master to tax all and any outstanding bills of costs presented to the respondent.

- [3] The respondents were also informed in the notice of motion, that in the event of the application being opposed, the applicant would request that security for costs be tendered in the amount of R 1 750 000 'for reasons which will be set out in the applicant's application'.

- [4] A further notice of motion, dated 25 July 2021 titled 'Request for security of costs Rule 47(1) of the Uniform Rules of Court' was filed. Herein the applicant requests security for costs as determined in terms of Rule 47 of the Uniform Rules of Court in the amount of R 1 750 000.00 'for the Respondents' unfair dismissal in contravention of the Protected Disclosures Act and compliance with all court orders the Respondents have refused to comply with under case number 34622/16 Johannesburg High Court, case number 81791/18 Pretoria High Court and case number 3087/20 in the Free State High Court.
- [5] An amended notice of motion pertaining to the main application dated 6 September 2021 was filed on CaseLine's. In this notice of motion relief is sought against the respondents in two parts. In Part A the applicant seeks that the respondent be directed in terms of Rule 53(5)(b) to deliver any affidavits in answer to the allegations made by the applicant. In Part B the applicant states that he:
- '[H]ereby amend prayer (i) in terms of Rule 53(4) of the Uniform Rules of Court to allow the Third Respondent a further opportunity (previously provided on the 06th June 2021 in the Applicant's Institution of Legal Proceedings notice) to make a decision to charge the Second Respondent in terms of the pending criminal proceedings under case number 648/06/2020 to either issue a directive to prosecute, alternatively issue a J175 certificate, alternatively a warrant of arrest, alternatively a certificate of nolle prosequi with reasons [for the] refusal to prosecute. Provide compelling reasons for failure to prosecute without fear, favour or prejudice in terms of Section 179 of the Constitution;
- Sworn affidavits from the Third Respondent pertaining to the failure, refusal and neglect of the Third Respondent in providing justice to the Applicant,' and costs.
- [6] A further notice of motion, dated 6 September 2021 titled "Request for security of costs Rule 47(4) of the Uniform Rules of Court' was also subsequently filed. The applicant seeks an order for security for costs as determined in terms of Rule 47 of the Uniform Rules of Court in the amount of R 1 750 000.00 'for the Respondents' unfair dismissal in contravention of the Protected Disclosures Act and compliance with all court orders the Respondents have refused to comply with under case

number 34622/16 Johannesburg High Court, case number 81791/18 Pretoria High Court and case number 3087/20 in the Free State High Court. The applicant further seeks the striking out of the respondents' notice to oppose and answering affidavit in the main application in light of the fact that security was not provided as requested.

- [7] The CaseLine's file reflects that an amended notice of motion pertaining to the main application and several other applications were also filed under the same case number. The practice note filed by the applicant is long and somewhat inconsistent.
- [8] On the morning of the hearing, a draft order was emailed to my registrar by the applicant. This draft order provides for the striking of the respondents' answering affidavit, security of costs in the amount of R 1 750 000,00, an order that the respondents are interdicted from raising any further defence and applications in cases PR85/21 Port Elizabeth Labour Court, case number 21407/20, 8179/18 and 14785/22 in the Pretoria High Court and Constitutional Court CCT55/22, and an order that the Taxing Master be instructed to tax all costs within five days of receipt thereof. The applicant also calls for the suspension of the Taxing Master for 'misconduct in failing to tax the bill in terms of Section 70 of the Uniform Rules of Court'. The remainder of orders sought by the applicant are that:
- i. The third respondent provide the applicant with a decision to prosecute the second respondent within 48 hours of the matter being heard by me;
 - ii. The second respondent be interdicted from continuing to practice under case number 9377/19 as per Collis J's order;
 - iii. In the event that the third respondent continue to refuse, fail and or neglect to comply with this order the third respondent be ordered to issue a nolle prosequi within 48 hours;
 - iv. The respondents' attorney of record and counsel be referred to the Legal Practice Council to be struck or suspended from the roll of legal practitioners on an urgent basis based on the offence of Section 9 of the Justice of the Peace and Commissioners of Oaths Act committed and Section 6 of the Public Services Act for refusal to provide information under this case, and
 - v. Costs de bonis propriis against all the practitioners.

- [9] Because of the extent of the papers filed, and the numerous applications uploaded to Caselines I pertinently asked the applicant whether I was only to decide the application for security of costs. He confirmed that that was the only application before me. He pertinently referred me to the CaseLine's section 004, where the application is uploaded. The first and third respondents' counsel, advocate P Loselo, stated at the onset of his address that he was prepared to address the court on the main application as well. I again asked the applicant whether the only application to be heard was the application for security of costs. He again confirmed.
- [10] I am thus only considering the application for security of costs. The applicant filed an affidavit, dated 25 July 2021, in support of the application for security of costs. He stated that he is a duly qualified and admitted attorney. He confirmed that he instituted the main application. The applicant listed the following grounds upon which security is claimed:
- i. In terms of the Protected Disclosures' Act an employee should not be exposed to 'occupational detriment'. The applicant submitted that he made protected disclosures prior to instituting proceedings under case number 81791/18;
 - ii. The respondents have not investigated his complaints. He states that 'The matter is currently before the above Honourable Court on 10 August 2021. In this matter no less than three exceptions have been raised and piecemeal litigation has become the order of the day with submissions and opposition made from the bench.'
 - iii. The applicant refers to outstanding costs orders in other matters.
 - iv. The applicant laments that he had to 'virtually chase his tail to be provided with answering affidavits after opposition has been noted. *Thereafter simply nothing further is done.* When advising presiding judges of same I am looked at in complete disbelief that the Office of the State Attorney conducts its affairs in this manner. I am vilified and treated with scorn by presiding judges when I inform them of the dereliction of duty. The Respondent follow suit even taking selfies in court to celebrate their victory. In this matter the trend has continued with notices to oppose my application to strike out their defence/

exception with nothing being done thereafter. I even received a Rule 30 notice complaining that they were not given enough time to provide an answering affidavit despite an undertaking as far back as 29 July 2020 that they would set down the exception wherein nothing has taken place since then.'

- v. The applicant also highlights that the respondents fail to attend pre-trial conferences, case management meetings, attend to discovery or anything at all in preparing this matter for hearing. I pause to note that the remarks relating to an exception, pre-trial and case management and discovery assumedly refers to the litigation under a different case number.
- vi. The applicant then continues to refer to litigation under case number 34622/16, and claims that the security is necessary because 'vexatious and career damaging allegations have been levelled' in the litigation under case number 34622/16.
- vii. Under case number 21407/2020 the applicant's salary was frozen and an application in this regard was presumably heard by Sardiwala J. It seems as if a dispute exists as to the nature and effect of the proceedings before Sardiwalla J because the applicant states: 'Taxpayers monies are now going to be wasted for the simple farce to determine whether Sardiwala J had ruled on my dismissal. All court orders and court transcripts have been provided to the Respondent showing same never took place despite submissions they made to the Minister of Justice... On the date when the matters will be heard a whimsical excuse will be provided which will be accepted by the presiding judges.' The applicant also refers to an application under case number 2556/2020 involving the Legal Practice Council.

[11] The request for security is based on the fact that the applicant is unemployed. He claims that 'despite being reinstated I have to jump through several hoops for Judges to rubber stamp my reinstatement', and in addition the respondents fail to comply with court orders or pay costs orders.

[12] In a second affidavit, dated 6 September 2021, filed with the second notice of motion pertaining to the application for security of costs, the applicant states that he requests security for costs because: 'It is customary for the First respondent to file

papers out of time with scant regard for Rules of Court.’ In addition, submissions are often made from the bar in the absence of opposing papers being filed. The applicant states: ‘In order to prevent this circus from continuing especially where there are absolutely no reasons advanced in terms of Rule 27 or no dispute of fact I hereby demand security for costs.’ Reference is again made to other litigation wherein the parties are embroiled.

- [13] The respondents did not file an answering affidavit opposing the application for security for costs, but deals with the application in the answering affidavit dated 15 March 2022. They submit that the allegations made are incoherent, unsubstantiated, repetitive and abusive. The respondents take issue with the fact that the applicant approached the court on notice of motion before first delivering a ‘notice setting forth the grounds upon which such security is claimed, and the amount demanded’. The applicant erroneously combined the demand and the application to the court. In the result, the respondents submit that the application is premature. They also submit that the application is misguided, for on a proper interpretation Rule 47 provides that security of costs can be sought where there is reason to believe that a party would be unable to pay the costs of its opponent if successful.

Rule 47

- [14] It is trite that there are various grounds on which a litigant may be required to furnish security for costs in litigation. Courts have a discretion to grant or refuse an order for security and will consider the facts of each case in coming to a decision.¹ The circumstances wherein security for costs is usually requested are either because the plaintiff is a *peregrinus*, either of the parties are insolvent, or a company, or where the litigation is vexatious.
- [15] The applicant bases his claim for security of costs, amongst others, on the respondents’ failure to pay past awarded costs. The costs orders granted relate to litigation under different case numbers. The respondents aver that the costs have

¹ See Cilliers *et al.* Herbstein and Van Winsen, The Civil Practice of the High Courts and the Supreme Court of Appeal of South Africa, 5th ed. JUTA, 391, and case law referred to by the learned authors.

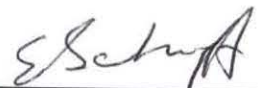
not been paid either because it was not yet taxed, or because the applicant or the applicant's attorney failed to register as a vendor as required by the policies of the first respondent.

- [16] It is evident that the applicant is of the view that the respondents are abusing the court process and that this entitles him to security. Unfortunately, I have to agree with the respondents that the applicant's application is incoherent. The applicant cannot in this application seek security for costs based on any alleged 'unfair dismissal' or the respondents alleged contempt of court of unrelated court orders. I use the word 'unrelated' in the sense of litigation under different case numbers for it seems as if the same occurrences and facts underpinning the main application may well feature in litigation under different case numbers. In addition, the applicant failed to explain how the amount of security is to be calculated.
- [17] I am of the view that it is fair to both parties that the costs of this application is costs in the cause. The applicant might not have been successful but it is evident that the respondents did not give proper attention to my directive that was uploaded to the CaseLine's file as early as 20 May 2022 wherein the parties were informed that the matter would be heard at 9h30. We were obliged to wait for the respondents' counsel who stated that he did not know that the matter was set down for 9h30.

ORDER

In the result, the following order is granted:

- 1. The application for security for costs is dismissed.**
- 2. Costs are costs in the cause**



E van der Schyff
Judge of the High Court

Delivered: This judgement is handed down electronically by uploading it to the electronic file of this matter on CaseLines. As a courtesy gesture, it will be sent to the parties/their legal representatives by email.

The applicant:	In Person
For the first and third respondent:	Adv. P Loselo
Instructed by:	State Attorney
Date of the hearing:	18 May 2022
Date of judgment:	20 May 2022