IN THE HIGH COURT OF SOUTH AFRICA

GAUTENG DIVISION, PRETORIA

DELETE WHICHEVER IS NOT APPLICABLE

(1) REPORTABLE: ***NO***

(2) OF INTEREST TO OTHER JUDGES: ***NO***

(3) REVISED: **NO**

Date: ***27 July 2022*** Signature: _____

Case Number: 30109/2022

In the matter between:

N.T. MAKHUBELE ENTERPRISES CC	1st Applicant
NATHANIEL TSAKANE MAKHUBELE	2nd Applicant
HITEKANI FAST FOODS CC	3rd Applicant

and

BUSINESS PARTNERS LTD	1st Respondent
SHERIFF OF THE HIGH COURT – SOWETO WEST	2nd Respondent

SHERIFF OF THE HIGH COURT – ROODEPOORT NORTH 3rd Respondent

REGISTRAR OF DEEDS – JOHANNESBURG 4th Respondent

TAXING MASTER – PRETORIA HIGH COURT 5th Respondent

EXECUTIVE AND NON-EXECUTIVE DIRECTORS: BUSINESS PARTNERS LIMITED 6th Respondent

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JUDGMENT

NYATHI J

Introduction

[1] The Applicant has brought this application as one of urgency seeking the following interdictory relief:

1.1 The leave to appeal against the whole of the judgment and orders delivered by the Honourable Judge Munzhelele on 17 March 2022 under cases numbers 48576/2014 and 29708/2018; and

1.2 The recusal application of the Honourable Judge Munzhelele instituted on 18 April 2022 under cases numbers 48576/2014 and 29708/2018; and

1.3 The leave to appeal against the order delivered by the Honourable Judge Tuchten on 02 June 2017 under case number 48576/2014

refusing the rescission of the judgment and orders delivered by the Honourable Judge Makume on 20 August 2015 under case number 48576/2014;

1.4 The ex parte order delivered by Honourable Acting Judge Bokako 03 August 2021 under case number 37887/2021 pending finalisation of the proceedings alluded to at paragraphs 2.1 to 2.4 above; and

1.5 The action proceedings between the Applicants and the 1st Respondent under case number 2220/2017 at the Johannesburg High Court:

(a) The 1st Respondent is interdicted and restrained from causing the 2nd Respondent to conduct a sale in execution of the immovable property registered in the name of the 2nd Applicant, that is, Erf 1838 Ndaba Street Protea North, Soweto (hereinafter referred to as the immovable property) or that such be stayed; and

(b) The 2nd Respondent is interdicted and restrained from conducting a sale in execution of the immovable property or that such be stayed; and

(c) The 4th Respondent is interdicted and restrained from

(a) lifting the interdict against 1st Respondent relating to the 2nd Respondent's immovable property; and/or

(b) transferring the 2nd Respondent’s immovable property into the name or in favour of the 1st Respondent or any other third party; and

(d) The 1st Respondent is interdicted and restrained from presenting for taxation to the 5th Respondent any bills of costs that may have been or be awarded to the 1st Respondent against the Applicants under cases numbers 48567/2014, 29708/2018 and 37887/2021 or any case whatsoever; and

(e) The 5th Respondents is interdicted and restrained from taxing any bills of costs that may have been or be awarded to the 1st Respondent against the Applicants under cases numbers 48567/2014, 29708/2018 and 37887/2021 or any case whatsoever; and

(f) The 1st Respondent, its directors and legal representatives is interdicted and restrained from disclosing to any person, legal or other proceedings any confidential and private information they may have at their disposal that the Applicants inadvertently addressed to the 1st Respondent, its directors and legal representatives; and

(g) The 1st Respondent is interdicted and restrained from

(i) bringing any application or action proceedings against the Applicants or any third party; and

(ii) opposing or defending any application or action proceedings the 1st Respondent brought against the Applicants or any third party in any court or law or tribunal in this country until it has purged its contempt alluded to at paragraph 4 of the Notice of Motion.

1.6 That costs of this application be reserved until the hearing of Part A of this application.

[2] The Applicants are not legally represented but conduct the litigation through the efforts of the 2nd Applicant who is apparently the managing member and owner of the 1st and 3rd Applicants. The Respondents are represented by Counsel.

[3] The parties made submissions regarding why this matter should be heard as one of urgency and not in the ordinary course. The Applicants submitted that there is an impending sale in liquidation of an immovable property that serves as a catalyst. The auction is set for the 28th July 2022. The Respondents opposed the application and moved for the application to be dismissed with costs for lack of urgency. I exercised my discretion having taken all the circumstances and heard the matter on the merits nonetheless.

<u>The facts briefly:</u>

[4] The Applicant seems to be seeking some interdictory relief as well as rescission of judgments where the various courts found against him and/or his corporate entities. There is a long history of litigation between the parties.

[5] The judgment that is a precursor to the sale in execution was granted by Makume J during August of 2015.

[6] The Applicants have applied for leave to appeal to both the Supreme Court of Appeal ("SCA") as well as the Constitutional Court all of which were refused.

[7] The applicants have also on two occasions applied for rescission of judgment and were unsuccessful.

[8] The applicants have been declared to be vexatious litigants by Munzhelele J in one of the matters which this instant application seeks to obtain leave to appeal against.

Analysis

[9] The burning issue behind this application is that the applicants are desirous to obtain a stay of execution, by hook or by crook.

[10] As regards the first 3 prayers for leave to appeal in the two instances and for the recusal of my sister Munzhelele J, they are simply legally incompetent remedies before me. Those applications are the competency of the judicial officers who heard the matters.

[11] Similar considerations apply as regards the rest of the remedies sought by the applicants. This court finds that no case was made justifying any of the interdictory relief sought.

[12] The matters have run their course, with applications for leave to appeal having been considered by the SCA and the Constitutional Court and found to be wanting. The hierarchy of our courts was created for cogent reasons. There simply is no legal merit in the application brought before me.

[13] In ***Zuma v The Secretary of the Judicial Commission of Enquiry into Allegations of State Capture, Corruption and Fraud in the Public Sector including Organs of State (CCT52/21) (2021) ZACC 28 (17 September 2021)*** the Constitutional Court held as follows:

"[1] Like all things in life, like the best of times and the worst of times, litigation must, at some point, come to an end. The Constitutional Court, as the highest Court in the Republic, is constitutionally enjoined to act as a final arbiter in litigation. This role must not be misunderstood, mischaracterised, nor taken lightly, for the principles of legal certainty and finality of judgments are the oxygen without which the rule of law languishes, suffocates and perishes."

[14] I accordingly make the following order:

The application is dismissed with costs.

J.S. NYATHI

JUDGE OF THE HIGH COURT

GAUTENG DIVISION

PRETORIA

CASE NUMBER: 30109/2020

HEARD ON: 28 June 2022

DATE OF JUDGMENT: 27 July 2022

FOR THE APPLICANT: Dr N.T. Makhubele

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