

IN THE HIGH COURT OF SOUTH AFRICA

(CAPE OF GOOD HOPE PROVINCIAL DIVISION)

CASE NO: 7233/2008

DATE: 14 AUGUST 2008

5 In the matter between:

VECTOR LOGISTICS (PTY) LTD APPLICANT

and

AL NAHAR A1 - SENAEI CC 1ST RESPONDENT

MILAD MOHAMMED LASHAHB 2ND RESPONDENTS

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JUDGMENT

ALLIE, J

15 In this matter, I want to first state, before I give my ruling, that
I have, after reading the papers this morning, offered Judge
Veldhuizen, the presiding judge in the matter on 14 May 2008,
who in fact made the draft order an order of court, an
opportunity to hear this matter himself, given the fact that he
20 was the presiding officer at the time.

However, he was unavailable to deal with this matter today,
and given the fact that applicant had counsel that was not from
this division come into the City to hear this matter, I informed
25 both counsel in chambers that I could hear the matter, and was

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prepared to hear the matter, even though I was seized with other urgent matters in the fast lane today, primarily to accommodate the fact that we had counsel involved that was out of town and that I did not want to escalate the costs unduly
5 for any party.

However, I have also explained to counsel in chambers that Judge Veldhuizen seemed to have a very good recollection of the matter, I might add that he went so far as to be able to tell
10 me exactly where the respondents were trading, and he certainly knew what had transpired in this matter and he was certainly of the view that he intended this matter to be referred for oral evidence and trial. I informed counsel of this before the hearing of this matter, and counsel was nevertheless
15 prepared to allow me to proceed with the hearing of this matter.

I mention this at the onset lest there be a situation where I am accused of having been prejudiced in this matter by the
20 discussions I had with Judge Veldhuizen.

My ruling in this matter is as follows.

It is firstly necessary for me to determine whether the order
25 granted on 14 May 2008 is clear and unambiguous. I am

certainly of the view that, from a procedural perspective, it is unclear, and therefore I am of the view that this Court has the authority to intervene in varying this order so as to make it clear for the purposes of regulating the further conduct of this matter and therefore for the purposes of regulating this Court's own procedure, which it has the authority to do. I am of the view that in an instance where the order is unclear, such as this, I may have regard to the record of the proceedings with a view to establishing what the presiding officer intended to order. On my reading of the record of the proceedings, I have been able to establish not only what the presiding officer intended to order, but also what the legal representatives of both parties were requested by the presiding officer to prepare as a draft order. I was also able to establish what the legal representatives, including the legal representative of the respondent intended to convey when presenting the draft order to the Court on 14 May, and I quote, the legal representative of applicant said:-

20 "The date of 8 September for the hearing of oral
evidence has been obtained from the registrar."

This representation was made to the Court in the presence of the legal representative for the respondent. They both acquiesced in this representation being made to the Court,

while it has subsequently transpired today, that the respondent argues that that was not what the draft order conveyed and was not what the draft intends to convey. So one of two things must have happened: either the legal representatives for the respondent and applicant deliberately sought to mislead the Court by stating that the draft order contained something which it did not contain, or there was a genuine and real error on the part of the legal representatives in drafting the order. In either event, whichever cause of conduct motivated the draftspersons of this order to draft that order the way it is, it is unclear. It is not in the interests of either party nor the administration of justice and the running of the matter that it be left in this unclear state.

So therefore my ruling is that the relief sought by the applicant in this matter would serve to regulate the proceedings of this matter and to facilitate the hearing of this matter on 8 September. In those circumstances I am prepared to GRANT THE RELIEF SOUGHT BY THE APPLICANT as prayed for in paragraphs 2, 3 and 4 of the notice of motion.

As regards paragraph 5 of the notice of motion, namely that the costs of this application may either be determined by the trial court, unless it is opposed, in which case the respondents are ordered to pay the costs of this application jointly and

severally.

As I have indicated in my brief reasons for this ruling today, I am of the view that the respondents' legal representative was well aware of what the presiding judge at the time, Judge Veldhuizen, had asked them to draft, and they were well aware of that because the advocates came back and told the judge that they had drafted what they were requested to. Then they in fact drafted something with serious omissions. In the circumstances I believe that the respondent was in fact mischievous in opposing this matter today and therefore I would then also grant the order that the respondents jointly and severally PAY THE COSTS OF THIS APPLICATION today.

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ALLIE, J