

**IN THE HIGH COURT OF SOUTH AFRICA
(WESTERN CAPE HIGH COURT, CAPE TOWN)**

Case Number: 27576/2010

In the matter between:

CHARL DOMINIC COETZEE

Applicant

and

HERMANUS BOSMAN GRIESSEL

Respondent

Heard: 11 August 2011

Court: Acting Judge J I Cloete

Delivered: 24 August 2011

JUDGMENT DATED THIS WEDNESDAY, 24 AUGUST 2011

CLOETE AJ:

Introduction

[1] This is the extended return date of a rule *nisi* which was granted *ex parte* on 20 December 2010 (*“the interim interdict”*), preventing the respondent from: (a) threatening the applicant in any manner or form; (b) approaching within 50 metres of the applicant; (c) approaching within 50 metres of the applicant's residence or place of work; (d) intimidating the applicant in any manner or form; and (e) physically harming the applicant. The applicant also seeks costs against the respondent.

[2] The respondent is unrepresented and opposes the granting of a final interdict against him.

Background

[3] The applicant is an attorney who practices as a director with the firm Louw Coetzee & Malan Incorporated (*"the firm"*). The firm represented the respondent and/or the company of which he is a director, Onyx Global Exports (Pty) Ltd, in a claim against a company based in Turin, Italy, namely Ale Fruit Srl.

[4] During the course of such representation the applicant and respondent consulted with a firm of attorneys in Italy. On their return to South Africa the respondent refused to make payment of a portion of the fees claimed in respect of the applicant's services, following which the firm instituted provisional sentence proceedings against the respondent and a third party. The provisional sentence proceedings were settled at some point after the granting of the interim interdict.

[5] On 19 December 2010 at 14h58, and after institution of the provisional sentence proceedings, the respondent sent an sms message to the applicant which read as follows:

'Be assured your confidence in self is remiss, be ready for the ride you've never been on before, however long it might take, I will not be the one to bleed – All the best to you my good and esteemed colleague' (the first sms).

[6] On the following day (20 December 2010) the respondent sent more sms messages to the applicant over the space of approximately an hour. These read as follows:

* At 14h35: *'You should read the "Apology of Plato" and then perhaps with the right words from you, I might accept yours – From you ever present colleague – Herman (That is a BC philosopher, I can provide the link if you don't have it, just ask)'* (the second sms);

* At 15:08: *'False words are not only evil in themselves, but they infect the soul with evil – Plato (427BC)'* (the third sms);

* At 15:38: *'Ignorance of all things is an evil neither terrible nor excessive, nor yet the greatest of all; but great cleverness and much learning, if they be accompanied by bad training, are a much greater misfortune – By far...'* (the fourth sms); and

* At 15h39: *'The examined life is not worth living to a human – Attributed by Plato to Socrates, "Apology"'* (the fifth sms).

[7] At midday on 20 December 2010 the applicant laid a charge of intimidation against the respondent. He also attempted, on the advice of a police official, to obtain a protection order against the respondent in terms of the Domestic Violence Act No 116 of 1998. At 15h00 that day he was correctly advised by a magistrate that a protection order against the respondent was not competent in terms of that Act and that he should seek a civil interdict against the respondent.

[8] The applicant obtained the interim interdict later that day.

[9] Subsequent to the granting of the interim interdict, the applicant has withdrawn the criminal charge against the respondent.

[10] The respondent, although not represented in these proceedings, was represented by both counsel and an attorney in the provisional sentence proceedings.

Issues for determination

[11] The applicant submits that the first sms was a clear attempt by the respondent to intimidate him, since it could be perceived as a threat of unlawful action, implying physical harm to be inflicted on him (through the use of the words '*be ready for the ride you've never been on before*' and '*however long it might take, I will not be the one to bleed*').

[12] Because the first sms was sent after institution of the provisional sentence proceedings, the applicant contends that it was clearly sent in response thereto. He argues that the respondent was represented by an attorney and counsel and there was no need for him to address any communication directly to the applicant. The respondent chose to use words suggesting an unspecified unpleasant experience in the offing for the applicant coupled with violent imagery and concluded with a sarcastic well-wishing that only served to amplify the threatening tone of the message, i.e. '*All the best to you my good and esteemed colleague*'. The tone of the message and the purpose for which it was sent, commencing with the phrase ('*be assured your confidence in self is remiss*') must have referred to the decision to institute provisional sentence proceedings against the respondent and was designed to make the applicant reconsider the wisdom of that decision.

[13] The applicant also argues that, objectively viewed, he could not be blamed for viewing the later sms's through a suspicious and concerned lens. The last sms ('*the examined life is not worth living to a human*') is particularly pertinent, as it suggests that the applicant is leading a life '*not worth living*'. Following on the first sms which evoked images of the applicant bleeding, and the subsequent messages, which hinted

at the applicant's '*evil soul*' and '*misfortune*' due to his '*cleverness and much learning...accompanied by bad training*', it was reasonable (and is still reasonable) for the applicant to fear that the messages constitute threats of physical harm. As a result of the threats the applicant is fearful for the safety of himself, his employees and his fiancée.

[14] The respondent filed a lengthy answering affidavit. He admitted sending the sms messages to the applicant, but sought to place a different meaning on the words used therein. The portion of his first sms reading '*be ready for the ride you've never been on before*' merely meant that the respondent would oppose the applicant's '*actions*' against him with vigilance. As for the portion of the first sms reading '*however long it may take, I will not be the one to bleed*', this meant that he was referring to the financial aspect of the ongoing litigation with the applicant. He meant that he would not be the one to '*bleed*' financially, and that the applicant would be the one to do so and who would be '*taken to task by the law*'. The purpose of the later sms's was to attempt to '*educate*' the applicant. This the respondent apparently sought to achieve by imploring the applicant to '*examine his own life*' and to come to the realisation that '*as his cleverness and learning is accompanied by bad behaviour, he's become a very, very dangerous man indeed, when by all appearances he seems to be upholding the law, when actually he's breaking the law*'.

[15] The respondent denied any interest in harming or intent to harm the applicant, his employees or fiancée. However, instead of letting that bald denial rest, the respondent devoted a considerable portion of his affidavit to casting aspersions on the applicant's allegedly violent history and character from which he sought to infer that

the applicant has *'extorted'* other people before and that his *'paranoia'* stems from these actions. The respondent referred to the applicant as *'this wild, Special Forces bush fighter, who's killed so many people'*. He contended that the interdict proceedings were a *'ruse and strategy'* adopted by the applicant to discredit him (i.e. the respondent) in the provisional sentence litigation. As the respondent would have it he *'knows for a fact'* that the applicant wishes *'to deplete'* his (i.e. the respondent's) cash flow *'by coercion'* through his knowledge of the law and the legal system.

[16] The applicant vehemently denies the respondent's allegations. He contends that the respondent's conduct, as evidenced by the sms messages and the contents of his answering affidavit, is erratic and irrational. A strong possibility exists that the respondent may engage in violent behaviour towards him. He was fearful of the respondent when he brought the application and is still fearful of him. He requests that the order be made final in order to provide him with ongoing protection against the respondent.

[17] During argument the respondent conceded that the sms messages sent by him to the applicant (in particular the first and fifth sms's) would have been perceived as a threat by a reasonable person receiving them. He made it clear that he regards himself as a confrontational person who has a fiery temper, and that he is still very aggrieved with the applicant. On more than one occasion he stated that he would not *'let up, I will not let this matter slide'*. He attempted to explain this by stating that it was his intention to pursue the applicant through legal channels. He was, however, adamant that he would never *'go away'*. He also attempted to justify his threats to the applicant by submitting that a reasonable person in the position of the applicant would not have

been disturbed by his threats since *'he knows what it is about'*.

[18] A final interdict is granted in order to secure a permanent cessation of an unlawful course of conduct or state of affairs. For the grant of such an order there are three requirements, all of which must be present:

18.1 A clear right, which the applicant has to prove on a balance of probabilities;

18.2 An act of interference, which is an act constituting an invasion of another's right;

and

18.3 Proof that there is no other satisfactory remedy available to the applicant.¹

[19] An act of interference implies an injury actually committed or reasonably apprehended. A reasonable apprehension of injury is one which a reasonable man might entertain on being faced with certain facts. An applicant for an interdict is not required to establish that, on a balance of probabilities flowing from the undisputed facts, injury will follow; he only has to show that it is reasonable to apprehend that injury will result. The test for apprehension is an objective one. This means that, on the facts presented to the court, it must decide whether there is any basis for the entertainment of a reasonable apprehension by the applicant.²

[20] In the present matter, the applicant has established a clear right. This right is

¹ C B Prest The Law and Practice of Interdicts Juta Law at pp42-48.

² *Setlogelo v Setlogelo* 1914 AD 221; and
Minister of Law and Order v Nordien 1987 (2) SA 894 (AD) at 896F-H.

enshrined in s 12(1) of the Constitution ³ which provides that:

'12(1) Everyone has the right to freedom and security of the person, which includes the right –

...

(c) to be free from all forms of violence from either public or private sources;

...

(e) not to be treated or punished in a cruel, inhuman or degrading way.'

[21] This right has also been codified and acknowledged in s 1(1) of the Intimidation Act, No 72 of 1982 which provides as follows:

'(1) Any person who-

(a) Without lawful reason and with intent to compel or induce any person or persons of a particular nature, class or kind or persons in general to do or to abstain from doing any act or to assume or to abandon a particular standpoint-

(i) assaults, injures or causes damage to any person; or

(ii) in any manner threatens to kill, assault, injure or cause damage to any person or persons of a particular nature, class or kind; or

(b) acts or conducts himself in such a manner or utters or publishes such words that it has or they have the effect, or that it might reasonably be expected that the natural and probable consequence thereof would be, that a person perceiving the act, conduct, utterance or publication-

(i) fears for his own safety or the safety of his property or the security of his livelihood, or the safety of any other person or the safety of the property of any other person or the security of the livelihood of any other person; and

(ii) ...

[Sub-para. (ii) deleted by s. 6 of Act 126 of 1992.]

shall be guilty of an offence and liable on conviction to a fine not exceeding R40 000 or to imprisonment for a period not exceeding ten years or to both such fine and such imprisonment.'

³ The Constitution of the Republic of South Africa, Act No 108 of 1996.

[22] On his own version, the respondent has interfered with the applicant's right. On his own version, the respondent has every intention of continuing to do so, albeit through what he now claims will be "*legal channels*". There is no doubt that the respondent is most aggrieved with the applicant and, in his own words, '*I am not ever going to go away*'. At worst for the respondent his threats constitute ones of physical harm; and at best, intimidation and harassment. He appears to have little if no insight into the consequences of his conduct and seeks to place the blame squarely on the applicant whom, it would appear, he believes deserves what is coming to him.

[23] I am satisfied that the applicant has no other satisfactory remedy available to him.

[24] In all the circumstances, the applicant is entitled to a final interdict.

[25] The applicant's counsel informed me at the commencement of the proceedings that the applicant had tendered to waive costs if the respondent consented to the final relief sought. This tender was rejected by the respondent. As the applicant has been successful in the relief claimed, it follows that the respondent should effect payment of his costs.

[26] I accordingly make the following order:

1. The rule *nisi* issued on 20 December 2010 is made final and the respondent is interdicted from:

- 1.1 threatening the applicant in any manner or form;

- 1.2 approaching within 50 (fifty) metres of the applicant;
 - 1.3 approaching within 50 (fifty) metres of the applicant's
residence ^{or} of place of work;
 - 1.4 intimidating the applicant in any manner or form;
 - 1.5 physically harming the applicant.
2. The respondent shall effect payment of costs of this application on a scale as between party and party as taxed or agreed.

A handwritten signature in dark ink, appearing to read 'J I Cloete', is written over a horizontal line.

J I CLOETE

ACTING JUDGE OF THE HIGH COURT