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

CASE NO: 19275/20

In the matter between

**LIEUTENANT COMMANDER S[....] V[....].
M[....]**

PLAINTIFF

And

**THE STATE
PRESIDENT
MINISTER OF DEFENCE
CHIEF OF THE SOUTH AFRICAN NAVY
OFFICER IN CHARGE LEGSATO CAPE TOWN
MR MARCEL DE WIT
MINISTER OF POLICE**

**FIRST DEFENDANT
SECOND DEFENDANT
THIRD DEFENDANT
FOURTH DEFENDANT
FIFTH DEFENDANT
SIXTH DEFENDANT
SEVENTH DEFENDANT**

AND

NATIONAL PROSECUTING AUTHORITY

THIRD PARTY

JUDGMENT delivered 7 December 2021

THULARE AJ

[1] This should be an application as envisaged in section 2(1)(b) of the Vexatious Proceedings Act, 1956 (Act No. 3 of 1956) for the plaintiff to be granted leave to institute proceedings against the defendants. An order had been granted, on 14 September 2018, that no legal proceedings shall be instituted by the plaintiff against any person in any court without the leave of that court. It was for the plaintiff to satisfy the court that the proceedings were not an abuse of the process of the court and that there was a *prima facie* ground for the proceedings.

[2] A judge allocated to attend to the matters filed by the applicant has to read on average 500 pages of 'urgent applications' at his instance. In my view, reference to just a few documents will suffice. The first will be the 'draft order' prepared by the applicant and filed on 12 November 2021. The draft order, which followed the notice of motion, read as follows:

"DRAFT ORDER

Having read the documents filed of record, heard counsel and considered the matter:

IT IS ORDERED THAT

1. The application is enrolled as an urgent action.
2. The bail condition against the Plaintiff by the Magistrate Court of Simons' Town is unconstitutional, unlawful, invalid and set aside.
3. The First Defendant must respect, protect, promote and fulfil the Plaintiff's rights enshrined in the Bill of Rights.
4. The Plaintiff has inherent dignity and the right to have His dignity respected and protected,
5. The Plaintiff has the right to life.
6. The Plaintiff has the right to freedom and security of the person, which includes the right not to be tortured in any way.
7. The Plaintiff and no one must be subjected to slavery, servitude or forced labour.
8. All Defendants are employed by the First Defendant to fulfil the obligations imposed by the Constitution and the law.

9. The Second Defendant must by proclamation declare the replacement of the terms “let us live and strive for freedom in South Africa our land” with “let us live and enjoy freedom in the Universe our home” in the national anthem of the Republic.
10. The First Defendant must arrest the decline in critical capabilities through immediate directed interventions as mandated by the South African Defence Review 2014 and imprison other Defendants for life for torturing the Plaintiff.
11. The First Defendant must remove Second Defendant from office on the grounds of a serious violation of the Constitution or the law, serious misconduct, or inability to perform the functions of office and compel the National Assembly to fulfil the obligations imposed in terms of section 89 of the Constitution.
12. The First Defendant must ensure that all organs of State including all Defendants fulfil their respective constitutional mandates.
13. The Second Defendant must cancel a permanent commission of the Fourth and Fifth Defendants for crimes against the State and the administration of justice.
14. The Second Defendant must remove from Office the Third and Seventh Defendants for crimes against the State and the administration of justice.
15. The Second Defendant must remove the Sixth Defendant from office for unlawfully and intentionally making a false entry on a DOD PERSOL System to the actual or potential prejudice of the Plaintiff.
16. The Seventh Defendant must without delay process SAPS CAS No 150/5/2020 registered on 2020-05-29 at Khuma Police Station.
17. The Plaintiff has security of tenure to land and property No 4 Cable Hill Road Simon’s Town 7975 and comparable redress.
18. The immediate retrospective reinstatement of the Plaintiff’s salary, benefits and allowances to be paid into the following banking details within 3 days:
 BANK NAME: CAPITEC
 ACCOUNT NUMBER: [...]
 BRANCH CODE: 470010
 ACCOUNT HOLDER: S[...] V[...] M[...]
19. The Plaintiff he hired an Executive Range of a Lexus pending the return at 100% working condition of His Lexus IS 250 SE registration [...] at the First Defendant’s expense.
20. The Fifth Defendant must allow the transfer of Case No A666/20; A718/20 and M503/20 from the Simon’s Town Magistrate Court in order to maintain military discipline and ensure a fair military trial to the Plaintiff.
21. The order issued on 14 September 2018 in terms of Case No 15141/2018 is rescinded.

22. The Defendants be ordered to pay the costs.”

[3] Amongst the many papers filed is one titled “Role of Parties”. Its first two paragraphs read:

“TAKE NOTICE that the above-named Plaintiff has commenced proceedings against the above-named Defendants for the relief set forth in the notice of motion to be heard on Tuesday on the 5th day of January 2021 at 10H00 or as soon thereafter as the parties may be heard, a copy of which is herewith served upon you:

1. Lieutenant Commander S[....] V[....] M[....] (hereinafter referred to as the Plaintiff) defends and protects the Constitution, the territorial integrity and the national sovereignty of the Republic and our democracy, against all enemies, foreign and domestic. His inalienable right to life guaranteed in the Bill of Rights of the Constitution is entrusted to the nation and the State, and has pledged to serve and defend the Republic of South Africa in accordance with the Constitution and the law, and with honour, dignity, courage and integrity.”

[4] Paragraph 3 of the papers titled “Founding Affidavit” read as follows:

“3

The Republic of South Africa is in a critical decline as a result of corruption deeply rooted in organs or the First Defendant, including in the legislature, the judiciary and the national executive. For simply refusing to be part of corruption, the undersigned is denied all his inalienable rights, without shelter, food, and all his personal belongings in the streets and the National Flag on the muddy ground of Simon’s Town as ordered by the incumbent President Cyril Ramaphosa. All that has been happening was to suppress the truth.”

[5] On 3 December 2021 the plaintiff issued an email addressed to a multiplicity of persons within various organs of State, State institutions and Government Departments. Amongst the recipients were the Court Manager at this High Court, and the Provincial Head: Administration: Office of the Chief Justice. The introductory part thereof reads as follows:

“Good day

On 7 December 2021 at 10h00 in terms of section 14 (1) (a) of the Superior Courts Act Case Number (s) 15141/2018; 19275/2020 & 18063/2021 will be heard.

The Court Manager is requested to ensure that there is a projector and audio speakers available in court as there is video evidence that must be presented.

The national anthem affects us all, including our children and their children's children, and it is trite that "A child's best interests are of paramount importance in every matter concerning the child".

I am the Defence Force.

I serve and defend my country and its people in accordance with the Constitution and the law, and with honour, dignity, courage and integrity.

Without fear, favour or prejudice, the Acting Chief Justice Ray Zondo must in terms of section 165 (6) of the Constitution, read with section 47 of the Superior Courts Act and Rule 38 (1) (a) of the Uniform Rules of Court ensure that all witnesses attend court on 7 December 2021 at 10h00."

[6] For convenience I will use the names as assigned to parties by the applicant. The plaintiff's right to legal representation, including the right to approach Legal Aid South Africa, local Universities, the Legal Practice Council and the Cape Bar Council for assistance was explained, and he elected to conduct his own case. An "urgent application" of the plaintiff, against the Minister of Defence and others was struck off the roll on 31 August 2021 for failure to comply with the court order of 14 September 2018. Mangcu-Lockwood J ordered the plaintiff to pay the costs of that 'urgent application' on an attorney and client scale and further ordered that the plaintiff shall only be allowed to sue, even if he had been granted leave, only after paying the costs of the application then before her.

[7] Both orders of 14 September 2018 and 31 August 2021 were disregarded. The notice of motion had two stamps of the Registrar in the General Office, the one dated 30 December 2020 and the other dated 13 January 2021. All that the plaintiff did on 11 November 2021 was to file a notice of set down. The next day, the 12th November 2021 he filed the draft order, the index and a list of 38 authorities he relied on. The rate at which the plaintiff is filing documents at court, almost every day, is causing a great inconvenience to the administration of justice. He has become an annoyance to the court administration more so because it is either his way or the high way in how the matters are to be dealt with, which often called for the intervention of security either to calm him down or to remove him from one office or the other.

[8] Section 27(1)(a)(ii) of Mental Health Care Act, 2002 (Act No. 17 of 2002) read as follows:

“Application for assisted care, treatment and rehabilitation services

27. (1)(a) An application referred to in section 26 may only be made by the spouse, next of kin, partner, associate, parent or guardian of a mental health care user, but where the –

(ii) spouse, next of kin, partner, associate, parent or guardian of the use is unwilling, incapable or not available to make such an application, the application may be made by a health care provider.”

Section 27(2)(b)(ii) provides:

“(2) Such application must be made in the prescribed manner, and must-

(b) if the applicant is a health care provider, state –

(ii) what steps were taken to locate the relatives of the user in order to determine their capability or availability to make the application.”

[9] Section 26 read as follows:

“Care, treatment and rehabilitation services for mental health care users incapable of making informed decisions

26. Subject to section 9(1)(c), a mental health care user may not be provided with assisted care, treatment and rehabilitation services at a health establishment as an outpatient or inpatient without his or her consent, unless –

(a) a written application for care, treatment and rehabilitation services is made to the head of the health establishment concerned and he or she approves it, and

(b) at the time of making the application-

(i) there is a reasonable belief that the mental health care user is suffering from a mental illness or severe or profound mental disability, and requires care, treatment and rehabilitation services for his or her health or safety, of for the health and safety of other people; and

(ii) the mental health care user is incapable of making an informed decision on the need for the care, treatment and rehabilitation services.”

[10] Justice demands that I initiate that steps be taken to locate the relatives of the applicant in order to determine their capability or availability to make an application as envisaged in section 27(1)(a)(ii) read with section 26 and 27(2)(b)(ii) of the Mental Health Care Act, 2002 (Act No. 17 of 2002) (the MEHCA). Section 26 deals with the care, treatment and rehabilitation services for mental health care users incapable of making informed decisions. Section 27 provides for the application for assisted care, treatment and rehabilitation services. Whilst section 27(1)(a)(ii) makes provision for

the health care provider, like a person in the position of the District Surgeon to make a written application for care, treatment and rehabilitation services in respect of the user to the head of the health establishment, it seems to me that the Legislature preferred that the relatives of such user should be involved in such an application unless they were unwilling, incapable or not available to make such an application.

[11] The plaintiff was a member of the armed forces of the Republic. He held the rank of Lieutenant-Major in the Fleet Command of the South African Navy, stationed in Simon's Town. He was charged with five offences relating to what was seen as offensive behaviour, four of which related to his failure to appear at his place of duty and one to both failure to appear and making a false entry on the day register. It is the events arising out of these developments and their consequences in his life which, in my view, appear to have had an adverse effect on the plaintiff.

[12] In my *prima facie* view, there is a need to ascertain whether the plaintiff can appreciate the nature of the orders granted against him, and consequently, the nature of the proceedings before the court, and what he in law, can competently place before the court, at this point of his intended litigation. In my view, the absence of a coherent provision of evidence and prayers for the relief sought, and the general conduct of the plaintiff both inside the courtroom, within the courthouse and outside, warrants some observation and investigation of his psychological, if not psychiatric position. I have my doubts about the state of his intellectual functions and the degradation of his memory. This may explain his warped papers.

[13] The Minister of Defence would be in a better position to help trace the relatives of the plaintiff, so as to provide them with an opportunity to consider to file an application as envisaged in section 27(1)(a) of MEHCA. I find that the plaintiff should go for observation, in the interests of justice. For these reasons I make the following order:

1. The Minister of Defence is to trace the relatives of the plaintiff and provide all the necessary assistance for them, if they so elect, to file an application as envisaged in section 27(1)(a)(i) of the Mental Health Care Act, 2002, before the end of the month of February 2022.

2. The Minister of Defence is to file a report in respect of 1 to be tabled at the date to which this matter is postponed.
3. Should the spouse, next of kin, partner, associate, parent or guardian of the plaintiff all be unwilling, incapable or not available to make such an application, the plaintiff shall present himself before the District Surgeon, Cape Town, on or before 9 March 2022 for consideration of section 27(1)(a)(ii) of the Mental Health Care Act, 2002.
4. The matter is postponed to 15 March 2022.

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DM THULARE
ACTING JUDGE OF THE HIGH COURT