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

Case number: 5392/2021

In the matter between:

NAFIZ MODACK	Applicant
and	
THE MINISTER OF POLICE	First respondent
THE NATIONAL COMMISSIONER OF THE SOUTH AFRICAN POLICE SERVICE	Second respondent
BRIGADIER SOLOMON MAKGATO	Third respondent
LIEUTENANT COLONEL EDWARD CLARK	Fourth respondent
CAPTAIN JOUBERT	Fifth respondent
WARRANT OFFICER DU PLESSIS	Sixth respondent

JUDGMENT DELIVERED ON 8 MAY 2023

VAN ZYL AJ:

Introduction

1. This application was initially brought as one for interim relief on an urgent basis. The applicant indicated later in replying papers that he had sought interim relief

at that stage in the event that the respondents were not able to deliver answering papers, and that since the respondents have delivered an answering affidavit, there was no reason why final relief should not be granted. The applicant thus seeks final interdictory relief against the respondents, to restrain the latter from:

> 1.1 "…*in any way whatsoever causing or attempting to cause the Applicant any physical or economic harm or injury of any nature whatsoever";*
>
> 1.2 "…*confronting, intimidating or in any other way whatsoever unlawfully harassing the abovenamed Applicant, any member of his family by birth or by marriage, and any of his employees and/or business associates";*
>
> 1.3 "…*entering the home, dwelling place or place of business of the abovenamed Applicant, and/or any member of his family by birth or by marriage and/or any of his employees and/or business associates, unless authorised by* a *warrant duly issued by an authorised judicial officer, or due and adequate cause for such entry exists in law."*

2. In seeking final interdictory relief, the duty is on the applicant to show (i) that he has a clear right; (ii) an injury actually committed or reasonably apprehended; and (iii) the absence of an alternative remedy.[1] All three requirements must be present.

3. The ordinary rules relating to the discharge of such duty on affidavit apply. Consequently, the version set up by the respondents must be accepted unless their allegations do not raise a real, genuine or *bona fide* dispute of fact, or are so far-fetched or clearly untenable that it will be justified to reject them merely on the papers.[2] The test in determining whether a respondent's version may be rejected on the papers, is "a *stringent one not easily satisfied".*[3]

4. The respondents oppose the application *inter alia* on the bases that:

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1 *Setloqelo v Setloqelo* 1914 AD 221 at 227.

2 *Plascon-Evans Paints Ltd v Van Riebeeck Paints (Pty) Ltd* 1984 (3) SA 623 (A) at 634 E-635 C.

3 *National Scrap Metal (Cape Town) v Murray & Roberts* 2012 (5) SA 300 (SCA) at para [22].

4.1 the applicant lacks the necessary *locus standi* to institute these proceedings for the relief sought to the benefit of other parties;

4.2 the applicant has failed to join a number of parties who, on his version, have a direct and substantial interest in the outcome of this application;

4.3 the relief sought by the applicant is impermissibly vague and ambiguous and, if granted, the order will not be executable and enforceable; and

4.4 the applicant has failed to meet the requisites for final interdictory relief as he has not shown a clear right, nor has he demonstrated an injury actually committed by the respondents, or reasonably apprehended.

5. Before dealing with these grounds of opposition, the relevant facts underlying the application are set out.

The relevant factual background

6. The following facts are either common cause, or have been established for the grant of final relief.[4]

7. The third to the sixth respondents are part of a National Task Team responsible for the investigation of the murder of the late Lieutenant Colonel Charl Kinnear ("Kinnear"), who was attached to the Western Cape Anti-Gang Unit. Kinnear was shot inside his state vehicle in front of his home in Bishop Lavis. A case of murder was registered under case number Bishop Lavis CAS 304/09/2020.

8. In the course of the murder investigation, the sixth respondent received a threatening telephone call on his official cellular phone from an unknown caller, who stated that there was a R1 million "hit" on his head. As a result, the sixth respondent

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4 In terms of *Plascon Evans supra*.

registered a criminal complaint of intimidation under case number Bellville CAS 450/01/2021.

9. The fourth respondent, who was assigned as the investigating officer in the intimidation case, established the identity of the caller as a Mr Petrus Visser (“Visser”).

10. On 3 March 2021, the fourth respondent applied for, and was granted, a warrant of arrest (commonly referred to as a "J50 Warrant of Arrest") for Visser in terms of section 43 of the Criminal Procedure Act 51 of 1977 ("the CPA") in the Bellville Magistrate's Court in respect of the charge intimidation. As a result, members of the National Task Team commenced an operation to locate and arrest Visser pursuant to the warrant of arrest.

11. During his investigation the fourth respondent discovered that Visser was employed by the applicant. The fourth respondent also established the location of several addresses frequented by Visser. On 4 and 5 March 2021, members of the Task Team, accompanied by members of the Special Task Force of the SAPS, visited the following addresses:

11.1 […] S[…] Street, Summer Greens;

11.2 1[…] T[…] Street, Plattekloof;

11.3 […] J[…] Close, Plattekloof; and

11.4 the residence of the applicant's mother-in-law and father-in-law, situated at Tulbagh Street, Monte Vista.

12. The Task Team was unable to locate Visser at any of these addresses. He was finally arrested when he handed himself over to the police on 12 March 2021.

13. The applicant was not present at any of these addresses during the visits on 4 and 5 March 2021. He only delivered confirmatory affidavits of Ms Charmaine Visser

(the wife of Visser's brother, Mr Matthys Visser), who was present during the Task Team's visit to […] S[…] Street, Summer Greens, and of Mr Elvis Willemse, who was present during the Task Team's visit to […] J[…] Close, Plattekloof. No confirmatory affidavits have been delivered in respect of the visits to the other two addresses.

14. The respondents' version regarding the actions taken by the Task Team to locate and arrest Visser at these addresses is that the Task Force members did not behave unlawfully and did not confront, intimidate or harass the applicant, nor did they cause the applicant any physical or economic harm or injury. They were authorised to enter the premises (when they did so) by virtue of the consent given to them to search each relevant property and were further authorised by virtue of their possession of a duly granted warrant of arrest. No official present at the various premises forced entry, or caused any damage to property whilst conducting the operation to locate and arrest Visser. In the circumstances, the respondents did not behave unlawfully.

15. Information provided by Visser in his Warning Statement, obtained after his arrest, revealed that he frequented three of the four addresses visited by the Task Team. The fourth address, […] S[…] Street, Summer Greens, is the address of his brother and sister-in-law.

16. The applicant admitted in a replying affidavit that the search for Visser at the home of his brother was "understandable". Before the applicant approached this Court to apply for interdictory relief (at that stage on an urgent basis), he knew that the Task Team visited those premises because they were searching for Visser. He was told this much by Ms Charmaine Visser, and by the fourth respondent.

The issue of *locus standi*

17. The respondents aver that the applicant does not have the requisite *locus standi* to seek the relief sought in the notice of motion.

18. Generally, an applicant must have a direct interest in the subject matter, which interest must not be too far removed. A mere moral interest is insufficient to

ground a right to institute a matter.[5] In order to determine whether a party has standing in a matter, it is thus to be considered whether the party is enforcing a legal right and has sufficient interest to do so.[6] The interest must be actual, not abstract or academic, and it must a current interest, not a hypothetical one.[7]

19. In addition, the appropriate allegations to establish the *locus standi* of an applicant should be made in the founding affidavit.[8] The onus to prove that a party instituting proceedings has capacity to do so rests upon that party.[9] In this regard, it must be borne in mind that a deponent to an affidavit need not be authorized by the party concerned to depose thereto. Rather, it is the institution of the proceedings and the prosecution thereof which must be authorized.[10]

20. A consideration of the founding papers reveals that the applicant falls far short in this respect. He does not even allege that he is authorised to institute these proceedings on behalf of the unnamed and unidentified family members, employees, and business associates on whose behalf he seeks relief in his notice of motion.

21. The issue of *locus standi* is not, as the applicant argues, a mere “technical defence". It goes to the root of the matter. If the applicant cannot establish that he had the necessary authority to institute these proceedings on behalf of all the unnamed and unidentified family members, employees and business associates that he seems to represent, those parts of the relief claimed on the third parties’ behalf in the notice of motion cannot be granted.

22. I agree with the submission made by the respondents’ counsel that the applicant has failed to demonstrate a sufficient and direct interest in order to institute these proceedings on behalf of these persons.

23. I nevertheless proceed to consider the issues of non-joinder, the respondents’

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5 *Moloto Communal Property Association v Tshoane* [2019) ZAGPPHC 325 (19 February 2019) at para [5].
6 *Gross and others v Pentz* 1996 (4) SA 617 (SCA) at 632C-F.
7 *Jacobs v Waks* 1992 (1) SA 521 (A) at 533J-534A.
8 *Scott v Hanekom* 1980 (3) SA 1182 (C) at 1188H.
9 *Mars Incorporated v Candy World (Pty) Ltd* 1991 (1) SA 567 (SCA) at 575H-I.
10 *Ganes v Telecom Namibia Ltd* 2004 (3) SA 615 (SCA) at 624G-H.

argument in relation to the vague nature of the relief sought, and the merits of the application for final interdictory relief.

The issue of non-joinder

24. The law on joinder is well settled. The test is essentially whether a party has a direct and substantial interest in the subject matter of the litigation, that is, a legal interest in the subject matter of the litigation, which may be affected prejudicially by the judgment of the Court. The failure by an applicant to join with himself as co-applicant another person whom the law requires should be joined when suing a particular respondent or respondents amounts to a material and fatal non-joinder. [11]

25. On the applicant's version, Mr Matthys Visser, his wife Mrs Charmaine Visser, Mr Elvis Willemse, the unnamed owners of the business he seeks to protect (the owners are allegedly related to him), as well as the applicant's father-in-law and mother-in-law, all have a direct and substantial interest in the relief he is seeking. They ought therefore to have been joined, as they are directly implicated in the allegations about the events that transpired on 4 and 5 March 2021 in SAPS' search for Visser:

25.1 In respect of the events which allegedly occurred on 4 March 2021 at 5 St Patrick Street, Mr Matthys Visser and his wife Mrs Charmaine Visser have an interest.

25.2 In respect of the events which allegedly occurred on 4 March 2021 at 1[…] T[…] Street, Plattekloof, Mr Willemse has an interest.

25.3 In respect of the events which allegedly occurred on 5 March 2021 at the unknown business premises of persons to whom he is related, the unknown business owners have an interest (the applicant states that SAPS forced entry to the premises without consent, and conducted an illegal search thereof).

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[11] See the discussion in Van Loggerenberg *Erasmus Superior Court Practice* (2ed) Vol. 2 at D1-124.

25.4 In respect of the events that allegedly occurred on 5 March 2021, the applicant's father-in-law and mother-in-law and, possibly, his sister-in- law, have an interest.

26. The applicant states in his founding affidavit that the relief is sought because he is *"convinced that [his] fundamental rights will continue to be violated";* that the order *"will do no more than make it very clear to the Respondents that the rights which [he] enjoy[s] as a citizen and inhabitant of South Africa are to be respected";* and that the order will *"serve to protect [him] from any further unlawful violations of [his] fundamental rights"* as he believes that the respondents will continue to violate his rights unless he is granted protection.

27. In his replying affidavit, the applicant states that he seeks relief only for himself, and that no relief is sought on behalf of any other person. This assertion is clearly at odds with the content of the notice of motion, in respect of which no amendment has been sought.

28. I agree, for these reasons, with the respondents' submission that the application suffers from a fatal non-joinder of numerous parties on behalf of whom relief is sought.

The relief sought is vague and ambiguous

29. There is another problem with the relief sought. It is widely framed, and the respondents argue that it lacks clarity in its wording, and is impermissibly vague and ambiguous. If granted, the order would not be executable and enforceable.

30. In *Eke v Parsons*[12] the Constitutional Court held as follows: *"If an order is ambiguous, unenforceable, ineffective, inappropriate, or lacks the element of bringing finality to a matter or at least part of the case, it cannot* be *said that the court that granted it exercised its discretion properly. It is a fundamental principle of our law that a court order must be effective and enforceable, and it must be*

[12] 2016 (3) SA 37 (CC) at para [74].

formulated in language that leaves no doubt as to what the order requires to be done."

31. In the notice of motion, the applicant seeks an order interdicting and restraining the respondents from *"in any way whatsoever causing or attempting to cause the Applicant any physical or economic harm or injury of any nature whatsoever".* [Emphasis added.] The relief sought is couched in such broad terms that, if granted, the order will effectively prevent the respondents from conducting any criminal investigation and carrying out arrest and search warrants whenever the applicant is the subject of any such an investigation, arrest, or search.

32. The applicant further seeks an order interdicting and restraining the respondents from *"confronting, intimidating or in any other way whatsoever unlawfully harassing the abovenamed Applicant, any member of his family by birth or by marriage, and any of his employees and/or business associates".* [Emphasis added.]

33. The applicant seeks, lastly, an order interdicting and restraining the respondents from *"entering the home, dwelling place or place of business of the abovenamed Applicant, and/or any member of his family by birth or by marriage and/or any of his employees and/or business associates, unless authorised by a warrant duly issued by an authorised judicial officer, or due and adequate cause for such entry exists in law".* [Emphasis added.]

34. An order restraining the respondents from "confronting" the applicant, any member of his family, his employees or his business associates is impossibly vague. If granted, this means that, notwithstanding whether there exists a legitimate basis to confront the applicant (or his family, employees or business associates), the respondents would be prevented in perpetuity from doing so.

35. In addition, the relief sought by the applicant seeks to protect any member of his family by birth or marriage, and any of his employees or business associates without any indication who these unnamed and unidentifiable persons are. The respondents would have no means to determine who is covered by such

an interdict.

36. The applicant retorts that the respondents do not need to know the identities of the persons to be protected by the order. Leaving aside the obvious point as to how the respondents will be able to comply with such an order, the applicant's view is misguided, having regard to the Constitutional Court's *dictum* in *Eke v Parsons supra*. Since the relief is couched in vague and ambiguous terms, neither the Court nor the respondents will know whether the relief, if granted, will be in respect of (using the respondents' examples) 10 persons or whether the applicant has 1 000 family members, employees and business associates who will be protected by the order.

37. If granted, such a "blind" order will have far-reaching consequences. The respondents will be unable to conduct their policing duties in relation to any of the applicant's family members, employees or business associates who are suspected of having committed a crime. Numerous contempt of court applications could arise therefrom.

38. I agree, therefore, that on this basis, too, the relief sought cannot be granted in the form in which it has been couched.

The merits of the application for interdictory relief

39. Refence has already been made to the requirements for the grant of final interdictory relief, as well as the approach to the grant of such relief on motion. The relevant facts, which are either common cause or have been established for the purposes of this application for final relief, have been set out.

40. In the applicant's heads of argument, it is contended that the respondents' case is weakened by two major defects, namely the alleged patent mendacity of the respondents' witnesses, and the alleged improbability of the version advanced by the respondents. These criticisms must be considered in the context of *Plascon Evans*.

41. The applicant argues, for example, that when the third respondent told the applicant and his legal representatives that the third respondent was investigating the organised theft of exotic motor vehicles and assured the applicant that he was not a suspect, those statements were untrue because the Task Force was investigating the murder of Kinnear and the applicant was the prime suspect in that murder investigation. The applicant does not explain why it is improbable for both versions to co-exist, namely, that the respondents were investigating the organised theft of exotic motor vehicles, in which the applicant was not a suspect, but that the third to sixth respondents were also part of a National Task Team responsible for the investigation of Kinnear's murder. These versions are not mutually exclusive.

42. It is common cause, further, that the Task Team only spoke to the applicant about the theft investigation in the presence of his legal representatives. It is also common cause that he was not deceived or lied to about the murder investigation. That subject was not discussed in the course of the meeting with the applicant and his lawyers.

43. There was no duty at that stage on the Task Team members to inform the applicant that he was a suspect in the murder investigation. It could seriously impair the investigative work of SAPS if they were under a general duty to inform every suspect of pending investigations.

44. The applicant also does not explain why (with reference to Visser) it is unlikely that the respondents *"went to so much trouble to find and arrest a single young man who was to be charged with a single count of intimidation"*. I agree with the submission made on the respondents' behalf that, in the face of the respondents' explanation in their answering affidavit, there is no merit in the contention that the respondents sought to search the places that Visser was known to frequent with a large team without a search warrant. In any event, this point seems moot, as it is beyond doubt that a search warrant for the arrest of Visser was in fact issued. It is common cause that Visser was arrested.

45. The applicant further argues that *"the members of the task force lied when*

they denied that a person was assaulted during the raids". There is no factual basis for this submission. The respondents have stated that the members of the Directorate for Priority Crime Investigation or National Task Team assaulted Mr Willemse. The respondents also stated that, although they had had sight of various videos which were posted on social media by the applicant and which depicted two members of the Special Task Force slapping Willemse with an open hand on the back of his head and, later, on his cheek, they have no personal knowledge of Willemse being struck with the butt of a machine gun.

46. I cannot find any reason to conclude that the respondents' version is improbable, or that the respondents have been dishonest in what they have stated under oath.

47. The question arises, lastly, and in the light of the issues discussed above, whether the applicant has satisfied the requirements for the grant of a final interdict.

Has the applicant established a clear right?

48. Whether the applicant has a clear right is a matter of substantive law; whether that right is clearly established is a matter of evidence. To establish a clear right, the applicant must prove on a balance of probabilities the right which he seeks to protect.

49. As mentioned, the applicant states that the relief he seeks is sought because he is *"convinced that [his] fundamental rights will continue to be violated";* that the order *"will do no more than make it very clear to the Respondents that the rights which [he] enjoy[s] as a citizen and inhabitant of South Africa are to be respected';* that the order will *"serve to protect [him] from any further unlawful violations of [his] fundamental rights",* as he believes that the respondents will continue to violate his rights unless granted protection, without more.

50. The applicant fails, however, to identify the clear right relied upon to which, if not protected by an interdict, an injury would ensue. The relief sought in terms of the

notice of motion moreover concerns other persons apart from the applicant. In fact, in his replying affidavit the applicant states that "it is the rights of those associated with me which were violated". On his own version, therefore, the applicant acknowledges a failure to prove a right clearly established on his own part.

51. The applicant has therefore not made out a case for the relief sought in prayer 3.1.1 of the notice of motion ("…*in any way whatsoever causing or attempting to cause the Applicant any physical or economic harm or injury of any nature whatsoever*"). Nowhere in the founding affidavit is there an allegation of the applicant having suffered any physical or economic harm or an injury because of the respondents' conduct. There is accordingly no basis for this interdictory relief since *"physical or economic harm or injury"* has not occurred. Any suggestion by the applicant that there is an apprehension that the respondents will cause him to suffer any physical or economic harm or injury is unreasonable when regard is had to the applicant's own version as set out in his founding affidavit, and compared with the respondents' allegations.

52. The applicant has also failed to meet the requirements for an interdict in relation to prayer 3.1.2 of the notice of motion ("…*confronting, intimidating or in any other way whatsoever unlawfully harassing the abovenamed Applicant, any member of his family by birth or by marriage, and any of his employees and/or business associates*"). In particular, the applicant has failed to demonstrate that the respondents have confronted, intimidated, or harassed him, his family, employees, or business associates. He has also failed to demonstrate that there is a reasonable apprehension that the respondents will do so in the future.

53. The same applies to the relief sought in prayer 3.1.3 of the notice of motion ("…*entering the home, dwelling place or place of business of the abovenamed Applicant, and/or any member of his family by birth or by marriage and/or any of his employees and/or business associates, unless authorised by* a *warrant duly issued by an authorised judicial officer, or due and adequate cause for such entry exists in law*"). The applicant has failed to demonstrate that the respondents unlawfully entered the home, dwelling place or place of business of the applicant, his family, his employees or business associates. He has failed to demonstrate that there is a

reasonable apprehension that the respondents would continue to do so. Notably, it is common cause that Visser was arrested before the applicant instituted these proceedings.

54. As indicated, too, instead seeking to protect and assert his own rights, the relief is essentially sought in respect of the applicant's (unknown) family members, his (unknown) employees as well as his (unknown) business associates. As to his family members, employees and business associates, the applicant's founding affidavit makes no mention of the clear right relied upon or to whom, if not protected by a final interdict, an injury would ensue.

55. In these circumstances, the applicant has failed to establish the first requisite for obtaining a final interdict.

An injury committed or reasonably apprehended?

56. A reasonable apprehension of injury is one which a reasonable man might entertain on being faced with certain facts. The test for apprehension is an objective one. The applicant must therefore show, objectively adjudicated, that his apprehensions are well-grounded. Mere assertions of his fears are insufficient. The facts grounding his apprehension must be set out in the founding papers to enable the Court to determine for itself whether the fears are reasonable. [13]

57. The applicant alleges that "hardly a day has gone past in the last three weeks on which I have not had an interaction of one or other sort with those policemen and I am always afraid of what they might do". He fails, however, to provide any details of the alleged interactions or the policemen with whom he had daily interactions, or the reasons why the interactions warrant interdictory relief.

58. In any event, even if this was true, a mere interaction with members of the SAPS, even on a daily basis, is insufficient to justify the relief sought by the applicant, since the applicant does not allege that there was anything unlawful about

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[13] See the discussion in Van Loggerenberg *Erasmus Superior Court Practice* (2ed) Vol. 2 at D6-14.

the interactions.

59. The applicant alleges in his replying affidavit that the respondents are causing him direct harm by causing harm to others. However, the applicant does not explain how the alleged harm to others causes him, as opposed to the other person(s), harm. Instead, this unsubstantiated assertion demonstrates the failure by the applicant to meet the second requisite for a final interdict.

60. The applicant further alleges in his replying affidavit that he seeks to protect the right to live a life free of harassment and fear of being assaulted by members of the SAPS. The facts that the applicant relies upon in support of this assertion are the events of 4 and 5 March 2021, when SAPS were trying to locate Visser – not the applicant - to arrest him. A consideration of those facts does not warrant a finding that the applicant has been harassed or assaulted by members of SAPS, or that he has a reasonable apprehension that he will be harassed or assaulted again.

61. The applicant alleges that the J50 Warrant of Arrest did not authorise the search of the properties at the addresses mentioned earlier to locate and arrest Visser. Section 48 of the CPA, however, provides as follows:

> "Any person who may lawfully arrest another in respect of any offence and who knows or reasonably suspects such other person to be on any premises, may, if he first audibly demands entry into such premises and notifies the purpose for which he seeks entry and fails to gain entry, break open, enter and search such premises for the purpose of effecting the arrest."

62. Section 48 of the CPA permitted the respondents to break open, enter and search any premises for the purposes of effecting Visser's arrest, if they had a reasonable suspicion that he was present and after they had audibly demanded entry. It is, however, common cause that the respondents did not forcibly enter any of the homes visited in the course of their search for Visser. It was not necessary, since they were given consent to enter […] S[…] Street, Summer greens, […] J[…] Close, Plattekloof; and the residence of the applicant's mother-in-law and father-in-law in Tulbagh Street, Monte Vista. It is also common cause that SAPS never

entered the property situated at 1[…] T[…] Street, Plattekloof.

63. When the applicant deposed to his founding affidavit on 25 March 2021, Visser had already been arrested, a fact that the applicant was aware of. After Visser's arrest (on 12 March 2021), the purpose of the operation had been achieved. The applicant failed to disclose this evidence when he approached the Court to obtain interdictory relief. This failure demonstrates that it is the applicant, not the respondents, who was less than generous with the truth.

64. In the circumstances, the applicant has failed to satisfy the second requirement for the grant of final interdictory relief. In addition, and as was discussed earlier, his inability to demonstrate that he is suffering or will suffer some injury, prejudice or damage or invasion of a right peculiar to himself, indicates that he has no *locus standi* in these proceedings.[14]

An alternative remedy?

65. The final requirement for the grant of an interdict is that there should be no other satisfactory remedy available to the applicant. If there is an existing remedy "*with the same result*" for the protection of the applicant, an interdict will not be granted.[15]

66. As the applicant has failed to demonstrate that the respondents have interfered with his rights or to demonstrate a reasonable apprehension of injury by the respondents, it is unnecessary to consider the presence or absence of adequate alternative redress in some other form.

Conclusion

67. In all of these circumstances, I am of the view that the applicant has failed to make out a case for the relief sought, not only because of his lack of *locus standi*, the non-joinder of necessary persons, and the vague nature in which the relief has been couched, but also because the requirements for the grant of final interdictory

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14 *Von Moltke v CostaAreosa (Pty) Ltd* 1975 (1) SA 255 (C) at 258D-E.

15 See, for example, *Reserve Bank of Rhodesia v Rhodesia Railways* 1966 (3) SA 656 (SR) at 658E-H.

relief have not been satisfied.

68. Given this finding, it is not necessary to determine the respondents' application for the striking out of portions of the founding affidavit for being hearsay or irrelevant evidence.

Costs

69. The respondents were successful, and are entitled to their costs.

Order

70. In the premises, it is ordered as follows:

The application is dismissed, with costs, including the costs of two counsel.

P. S. VAN ZYL
Acting judge of the High Court

Appearances:

For the applicant:	L. Guma, Guma Attorneys
For the respondents:	P. Botha SC (with him R. Matsala),
Instructed by	the State Attorney