

**IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG PROVINCIAL DIVISION**



Case No: 56029/2018 & 83971/2019

(1) REPORTABLE: No
(2) OF INTEREST TO OTHER JUDGES: No
(3) REVISED: No


Signature

10/03/2023
Date

In the matter between:

VIRGIL HUMPHREY RABIE

1st APPLICANT

BERENICE ANTHEA RABIE

2nd APPLICANT

And

ADV BUSISIWE MKHWEBANE (THE PUBLIC PROTECTOR) 1st RESPONDENT

MR JOHN STEENHUISEN (THE DEMOCRATIC ALLIANCE)	2 nd RESPONDENT
MINISTER PRAVIN GORDHAN	3 rd RESPONDENT
ADV SHAMILA BATOHI (THE NPA)	4 th RESPONDENT
THE SOUTH AFRICAN POLICE – (DCPI)	5 th RESPONDENT
THE SIU – DR WELLS/MR NEAVE	6 th RESPONDENT
THE LAW SOCIETY OF THE NORTHERN PROVINCES	7 th RESPONDENT
ERNST AND YOUNG (EY)	8 th RESPONDENT
MR BRIAN DAMES (PREVIOUS CEO AT ESKOM)	9 th RESPONDENT

JUDGMENT

MOTEPE AJ

Introduction

- [1] Before me there are two applications. One brought by the applicants, being Mr and Ms Rabie, whereas the second application is brought by Ms Rabie on her own. Whereas there is no formal consolidation, the applications were heard together. I deal with both of them in this judgment.

[2] The essence of both applications is to interdict taxation of bills of costs set down for 25 May 2023, *“pending the final determination of a Rescission/Review application (lodged on 29 December 2022) by the 1st Applicant and/or a Rescission Application by the 2nd Applicant (lodged on 9 December 2022)...”*

[3] The applications are opposed by Ernst and Young (“EY”), the eighth respondent.

URGENCY

[4] For the conclusion that I reach, it is unnecessary to deal with the merits of the application. I may however point out that the judgment sought to be rescinded, was granted by my sister, her Ladyship Justice Janse van Nieuwenhuizen on 4 June 2021 (*“the judgment”*). Leave to appeal against this judgment was refused by her Ladyship on 2 November 2021. The applicants sought leave to appeal to the Supreme Court of Appeal. It was refused. They then sought leave to appeal to the Constitutional Court. It was equally refused. They now bring the rescission applications against that very same judgment.

[5] I am not seized with the rescission application. Despite the gallant efforts by Mr Rabie to point out both factual and legal errors committed by her Ladyship, it will be inappropriate for me to make any finding thereon since the rescission

application is still pending. I may however mention *en passant* that I have my doubts whether it is open to the applicants to seek a rescission of a judgment in this fashion, particularly where they sought to appeal it all the way to the Apex Court, albeit unsuccessful. I now turn to the question of urgency.

- [6] The applicants were first informed of EY's intention to tax bills of costs on 23 May 2022¹. Most importantly for current purposes is that on 21 July 2022, the applicants were served with notices of set down. They were informed in those notices that the taxation is set down for 25 May 2023.
- [7] As early as 23 May 2022², after being notified of EY's intention to tax its bills of costs, Mr Rabie requested the stay of taxation and threatened to interdict the taxation. He repeated those threats on various occasions thereafter. Despite these threats, Mr Rabie only delivered his urgent application on 23 January 2023. Ms Rabie's application was served on 11 February 2023.
- [8] Mr Rabie does not deny that they were notified of the date of the taxation. They contend however that they have repeatedly requested EY to withdraw the taxation and wait for all legal processes to conclude but that the latter declined their requests. They contend that it is these refusals by EY that ultimately prompted them to launch these applications. There are two emails that require further scrutiny.

¹ T1, F002-178

² T2, F002-181

[9] In his email of 23 May 2022³ to EY's attorneys of record, Mr Rabie stated therein that he had only received the judgment from the SCA on the same day and that he was appealing the matter to the Constitutional Court. He stated further that because of that, he would be "*compelled to interdict the taxation of this matter and related.*" He then says the following in the last paragraph of that email:

"Please advise if you are willing to stay the matter pending the outcome of the CC decision. I will submit papers on the CC appeal without (sic) the next few days." (Own emphasis)

[10] In response to this request, EY's attorneys wrote an email to Mr Rabie, informing him that they would proceed to take instructions from their client and will revert to him in due course.⁴

[11] EY's attorneys duly responded to Mr Rabie on 14 June 2022 in which they informed him that their instructions from EY's were to proceed with taxation. They however assured him that their client accepts that it would not be entitled to execute on the tax bill of costs "*in respect of any order that is the subject of pending appeal or application for leave to appeal, until the appeal/application for leave to appeal has been finally disposed of.*" They stated the following in paragraphs 2 and 3 of that email:

³ Annexure T4, F002-191

⁴ Annexure T2, F002-181

- "2. Our client is, however fully entitled to proceed to have its bills of costs taxed.*
- 3. With regard to your suggestion below that you will be compelled to interdict taxation should our client not acquiesce to your request, there is no basis on which to institute an interdict application in circumstances in which our client is merely seeking to tax its bills of costs, rather than executing on taxed bills that are the subject of the pending appeal or application for leave to appeal. Should you nevertheless seek to interdict our client from doing so, please note that our client will oppose the application and will seek punitive costs order against you."*
- (own emphasis)

[12] The email of 14 June 2022 from EY's attorneys was unequivocal. Their client did not accede to the applicants' request to stay taxation. Not only that, the email made it clear that any interdict application by the applicants will be opposed and a punitive cost order sought. In spite of this email, the applicants waited for 7 months before issuing this urgent application. This is the moment when the clock started ticking. It is then that the applicants ought to have launched their urgent application and not wait a further 7 months. The fact that Mr Rabie was writing emails requesting the stay is of no moment because they were all refused. It is unreasonable and the total abuse of the court processes for the applicants to now burden urgent courts with these applications. For this reason, both applications are struck of the roll.

COSTS

[13] The applicants have previously been mulcted with costs on a punitive scale because of the unsavoury allegations they make against used. In this application, Mr Rabie continues his unfortunate attacks on the Judiciary. At paragraph 11.5 of his founding affidavit, he *inter alia* states that “*thus the Judgment was blatantly false and fraudulently engineered*”.⁵ He proceeds to state that “*the Judgment of Judge Janse van Nieuwenhuizen thus contain falsities that appear to be dreamt up to get to a desired outcome as the statements in the Judgment claiming I had not sought condonation for a delay, had been blatantly false to justify a dismissal of my application.*” There are further similar gratuitous attacks on her Ladyship. It is unnecessary to detail of them. These attacks warrant a punitive cost order against the applicants. The second applicant, Ms Rabie, has informed me openly that she supports the submissions made by the first applicant, Mr Rabie. She should therefore not be spared from the punitive cost order.

[14] I pause to mention that Judges are human and may err. When they do err, the proper course of action is to appeal their judgments. What a litigant cannot do, is to launch gratuitous attacks against a Judge as the applicant has sought to do. This is most unfortunate.

[15] In the premises, I make the following order:

⁵ FA,F002-41

1. The application instituted by the first and second applicants dated 23 January 2023 is struck off the roll.
2. The first and second applicants are ordered to pay the costs of the application referred to in paragraph 1 on the attorney and client scale.
3. The application instituted by the second applicant on 11 February 2023 is struck off the roll.
4. The second applicant is ordered to pay the costs of the application referred to in paragraph 3 above on the attorney and client scale.



JA MOTEPE AJ

Acting Judge of the High Court of
South Africa Gauteng Division,
Pretoria

This judgment was handed down electronically by circulation to the parties and or parties' representatives by email and by being uploaded too CaseLines. The date and time for the hand down is deemed to be 00h00 on 10 March 2023

Heard on: 7 March 2023
Date of Judgement: 10 March 2023

Appearances

For the Applicants: Mr and Ms Rabie in person
Instructed by: No attorneys

For the 8th Respondent: Adv M.F.B Clark
Instructed by: Webber Wentzel Attorneys