

REPUBLIC OF SOUTH AFRICA
IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA

CASE NO: 2023-062766

(1) REPORTABLE: Yes ☐ / No ☒

(2) OF INTEREST TO OTHER JUDGES: Yes ☐ / No ☒

(3) REVISED: Yes ☐ / No ☒

Date: 06 July 2023

WJ du Plessis

In the matter between:

ELVIRA RUTH MAGDALENA MOKRANE

FIRST APPLICANT

MAKHLOUF MOKRANE

SECOND APPLICANT

and

JOHANNES JURGENS BORNMAN

FIRST RESPONDENT

GOTTFRIED RALPH BORNMAN

SECOND RESPONDENT

ELVIRA DOROTHEA BORNMAN

THIRD RESPONDENT

JUDGMENT

DU PLESSIS AJ

Background

[1] This is an urgent application to interdict and restrain the Respondents from contacting, alternatively to correspond with or report to, the Swiss Canton Polizei and the Swiss Immigration Services or any other Swiss government organisation or body, including the authorities in Wattvil, Switzerland, about or

in respect of the applicants, whether in their personal capacities or under the pseudonym “Tom Shear”; to interdict and restrain the Respondents from taking steps to prevent the Second Applicant and the Applicants’ minor children from emigrating to Switzerland; to interdict and restrain the respondents from disseminating in whatever way false, fabricated or defamatory statements in respect of the applicants and/or their ownership of the Gottfried Christian School; costs of the application on attorney can own client scale.

- [2] The Applicants must first cross the urgency hurdle before the substantive issues can be decided upon. Since the issue of urgency is so intertwined with the facts, it is necessary to set out the facts in some detail.

Facts

- [3] This unfortunate family dispute rests on an underlying dispute in a different matter¹ relating to the ownership and shareholding in a company called Gottfried Christian School (Pty) Ltd, which owns and controls a school with the same name. The sole shareholder is the first Applicant. How the sole shareholding came about is the issue in that dispute.
- [4] It is the respondents’ case that the shareholding belongs to either a family trust or the Third Respondent (the mother of the First Applicant and first and second Respondent). They claim that the control of the company was obtained by fraud and theft. The information about this, the allegation of fraud and theft, is not reported to the South African Police Service and has not been deliberated and decided on in court. It is this information that the Applicant wishes to interdict and restrain the respondents from sharing.
- [5] Launching these applications brought acrimony amongst the family members, now Applicants and Respondents. After launching the applications, there were various requests to stop direct contact, a rejection of mediation and a request

¹ Case number 2023-49551 filed on 23 May 2023.

from the Second Respondent for a settlement, followed by various counteroffers and rejections.

- [6] During this time, a certain “Tom Shear” with an email [t\[...\]](#) sent emails to the Applicants requesting the return of one legacy of the Third Respondent, alleging that it was stolen and obtained by fraud. Applicants were told that should they not adhere to this request, the email would be distributed to their employer, family in Switzerland, every church and school in Wattwill, Switzerland (where they intent to settle), as well as to the Gottfried Christian School community (amongst others).
- [7] A similar email was sent to people in the Gottfried Christian School community alleging that the applicants defrauded the school from the legacy of the First Applicant’s late father. A photograph taken by the Third Respondent and the document generated from the Applicant’s attorney’s office as served on the respondents were attached to these emails. This, the Second Applicant states, indicates that one of the respondents generated these emails.
- [8] The Applicants’ attorney requested the First and Second Respondents to “confirm in writing that they are not involved in and/or connected to the email in any way whatsoever”.² They neither confirmed nor denied it.
- [9] Applicant regards the content as “false, defamatory and devoid of any substance” and that it caused emotional trauma and reputational damage. Should these emails be sent to the Swiss police and Swiss Immigration Service, they fear entry into Switzerland may be refused. In light of the fact that the children (and presumably the First Applicant) are already in Switzerland, they fear it would prevent family reunification. The Second Applicant thus pre-emptly states that he might be barred from entering Switzerland based on allegations, not proven in a court of law or otherwise. The threats

² Annexure FA13 repeated in FA26.

were made on 26 June 2023, leading to the launch of the urgent application on 27 June 2023.

- [10] The Applicant advance that since the second Applicant's departure to Switzerland is imminent, this matter is urgent.

Ad urgency

- [11] Rule 6(12)(b) requires that

“(b) In every affidavit or petition filed in support of any application under paragraph (a) of this subrule, the applicant must set forth explicitly the circumstances which is averred render the matter urgent *and the reasons why the applicant claims that applicant could not be afforded substantial redress at a hearing in due course* (my emphasis).”

- [12] There are two elements to this. For one, the time frames in Rule 6 are abridged. This has various implications about enabling the Respondent to peruse the founding affidavit to enable them to file a proper answering affidavit.

- [13] The second element relates to the test that is laid down: whether the Applicant will be able to seek substantial redress in due course to protect his rights.³ It should be noted that possible harm alone does not indicate urgency – the focus is rather on the possibility of substantial redress. This should be distinguished from irreparable harm required for an interim interdict. This question arises when considering the merits.⁴

³ East Rock Trading 7 (Pty) Ltd and Another v Eagle Valley Granite (Pty) Ltd [2011] ZAGPJHC 196; Mogalakwena Local Municipality v Provincial Executive Council, Limpopo and Others [2014] ZAGPPHC 400.

⁴ Chetty v Chetty and Another (1362/20) [2020] ZAMPMHC 30 par 9.

- [14] The Applicant must set out the facts in the founding affidavit to inform the Respondent what to answer to on the issue of urgency, and to convince the court that it is urgent. The level of urgency as set out in *Luna Meubel Vervaardigers (Edms) Bpk v Makin (t/a Makin's Furniture Manufacturers)*,⁵ in turn, will justify the degree of reduction in the timeframes. The more urgent, the shorter the time periods.
- [15] The Second Applicant's founding affidavit outlines why they deem the matter urgent. However, the Second Applicant's founding affidavit does not address the requirement of substantial redress. For one, there is also no clear indication why the Swiss authorities will take an email from an unknown "Tom Shear" seriously, written in classic chain mail fashion, to prevent entry into Switzerland, nor if receivers of the email likewise take it seriously.
- [16] Moreover, the content of the email is very similar to the content of an attorney's letter sent to the Respondents earlier that set out the allegations of fraud and theft (amongst others). These are also contained in the court documents filled in the other pending matter. As such, this information is already in the public domain. As for the alleged defamatory statements, substantial redress is available in due course in the form of suing for defamation, for instance. Since substantial redress is available to the Applicants, this matter is not urgent.

Order

- [17] I, therefore, make the following order:

1. The application is struck from the roll, with costs.

WJ DU PLESSIS

Acting Judge of the High Court

⁵ 1977 (4) SA 135 (W).

Counsel for the Applicant:

Instructed by:

For the for Respondent:

Instructed by:

Date of the hearing:

Date of judgment:

Mr T P Krüger SC

Jordaan & Smit Inc

Ms N Nortje

Bornman Attorneys

04 July 2023

06 July 2022