

SAFLII Note: Certain personal/private details of parties or witnesses have been redacted from this document in compliance with the law and [SAFLII Policy](#)

IN THE HIGH COURT OF SOUTH AFRICA
FREE STATE DIVISION, BLOEMFONTEIN

Application number: 4468/2022

In the matter between:

MILA AZANIA HOLDING (PTY) LTD

Applicant

(Reg. no: 2015/002533/97)

And

DOTS DESIGN AGENCY

1st Respondent

(Reg. no: 2003/008121/23)

MOSA LIKOBO

2nd Respondent

(ID. no:[...])

REGISTRAR OF DEEDS, BLOEMFONTEIN

3rd Respondent

CORAM:

VANZYL, J

HEARD ON:

13 OCTOBER 2022

DELIVERED ON:

31 MARCH 2023

[1] This matter was enrolled as an urgent application which was heard on 13 October 2022. The applicant is seeking the following relief in terms of the Notice of Motion:

"1.1 This Honourable High Court with the leave and jurisdictional discretion is to:

1.1.1 Hear this application in terms of section 21(1)(c) of the Superior Courts Act 10 of 2013.

1.1.2 Condone the dispensing with the forms and service provided for in the Uniform Rules of Court and the non-compliance with the Uniform Rules of Court relating to service and the stipulated time frames in terms of Rule 6(12).

1.1.3 Direct this application to be heard on an urgent basis in terms of Rule 6(12)(a).

2. Order that the first and second respondent, its agents and representatives are forthwith interdicted and restrained from alienating or transferring out of the first respondent's name or in any way encumbering, mortgaging, dissipating or reducing the value of the immovable property.

3 Order that the third respondent is ordered to duly register the interdict and restraint set out in paragraph 2 *supra* against the aforementioned immovable property's title deeds.

4 Direct that the first and second respondents to pay the concomitant costs of this application, including the costs of a counsel, where so employed, except for the third respondent unless opposes this application.

5. Order that pending the determination of an action by way of combined summons for the enforcement of a contract against the respondents (the defendants in the main action) reinstituted (or reissued) by the applicant (the plaintiff in the main action) on the 15th of June 2022 out of the Gauteng Division of this Honourable High Court, Pretoria under the case number 24478/2022, the order contained in paragraphs 2 and 3 *supra* shall serve as an *interim* interdict with immediate effect therewith."

[2] Mr Kilifele appeared on behalf of the applicant and Mr Zietsman appeared on behalf of the first and second respondents.

[3] Mr Zietsman brought it under my attention that an exact same version of the application, only with different time frames set out in the Notice of Motion thereto, had previously been issued on 10 August 2022 under application number 3765/2022, which application was enrolled for hearing on 19 August 2022. The file in the said application number 3765/2022 was placed before me by Mr Zietsman's attorney of record. Mr Zietsman furthermore placed an email before me which his attorney of record addressed to the applicant's attorney of record, dated 17 August 2022. The subject line of the email refers to the parties as cited in the present application (and in the previous application). The contents of the email read as follows:

"The above matter refers.

Kindly note that we act on behalf of Dots Designs CC and Mr Likobo (hereinafter referred to 'our clients').

We defended the summons instituted by your client in the Pretoria High Court under case number 24478/22.

Our clients were blatantly unaware of any application issued in the Free State High Court under Case number 3765/22.

Our clients only received the Notice of Withdrawal of the Application. Kindly provide us with a copy of the Application and note further that we hold instructions to accept service on behalf of our clients of any legal proceedings in future."

[4] The said email is clearly with reference to the previous application, which was apparently withdrawn before it served before court on 19 August 2022. There is also no indication on the file that the matter served before any Judge on 19 August 2022.

[5] From a comparison of the founding affidavit filed in the present application with the founding affidavit filed in the previous application, application no. 3765/2022, it is evident that the one is an exact copy of the other, with the inclusion of the signature thereon and the commissioning thereof. At the same time, I should

mention that the founding affidavits are not dated and that the commissioning thereof was not done properly, in that the commissioner of oaths signed the affidavit and appended a stamp thereto, but completely failed to complete the attestation part thereof.

[6] The so-called "founding affidavit" which was filed in support of the relief sought in the Notice of Motion, does consequently not constitute a proper affidavit, in the absence of which the application stands to be removed from the roll.

[7] In addition to the aforesaid, an application which was previously enrolled as a so-called urgent application cannot be withdrawn and subsequently be issued as a new urgent application under a new application number by merely appending a new Notice of Motion thereto, without any explanation or indication with regard to the history of the application.

[8] In any event, an application which might have been urgent on 10 August 2022, being the date when the application under number 3765/2022 was issued, can obviously not, in the absence of a supplementary affidavit with an appropriate exposition of additional facts, still be considered to be urgent by 14 September 2022, being the date on which the present application was issued.

[9] The aforesaid fatally defective issues with regard to the present application, are exacerbated by the fact that there is no proof of service of the Notice of Motion and/or of the document titled *"Applicant's Filing Cover Sheet"* upon any of the respondents. It is only the *"Notice of Set Down - Motion Rolf"*, dated 5 October 2022, which contains a dated signature as so-called proof of service on the first and second respondents. The dated signatures for both the first and second respondents are the same. There is, however, no indication as to who appended those signatures to the Notice of Set Down.

[10] A similar dated signature, although dated 7 October 2022, is appended to the document titled *"Index - Application"*, next to the details of the first respondent. However, in this instance, no such signature appears next to the details of the

second respondent.

[11] There is furthermore no indication that the application was served upon the respondents' attorney, despite the abovementioned email which was addressed to the applicant's attorney, dated 17 August 2022.

[12] When I raised the aforesaid issues with Mr Kilifele, especially the issue with regard to the same fatally defective founding affidavits filed in both applications, he presented an explanation from the bar that the applicant has been experiencing problems to locate the first and second respondents for purposes of service.

[13] However, without expressing a view on the merits of the said explanation, which is also contained in the so-called "founding affidavit", I need to point out that the annexures which are being relied upon in the "founding affidavit" for purposes of the aforesaid explanation, have not been attached to the "founding affidavit".

[14] In view of all of the aforesaid, the application is fatally defective. There is no basis upon which I can consider this application as a properly enrolled and/or as an urgent application, let alone a consideration of the merits thereof.

[15] The following order is consequently made:

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

C. VAN ZYL, J

On behalf of the applicant:

Instructed by

Mr. A.B. Kilifele

Mhlokonya Attorneys

BLOEMFONTEIN

On behalf of the 1st & 2nd respondents:

Adv. P.J.J. Zietsman SC

Instructed by:

Muller Gonsior Attorneys
BLOEMFONTEIN