



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

Reportable:	YES/NO
Of Interest to other Judges:	YES/NO
Circulate to Magistrates:	YES/NO

Application number: 1852/2023

In the application between:

THE AFRICAN NATIONAL CONGRESS

Applicant

and

LEHLOHONOLO MOQOLO

1st Respondent

PATRICK MONYAKOANA

2nd Respondent

MAPASEKA MOTHIBI-NKOANE

3rd Respondent

CHABELI FRANK RAMPAI

4th Respondent

PUSELETSO LETICIA SELEKE

5th Respondent

MPHO MOKOAKOA

6th Respondent

MARYKE DAVIES

7th Respondent

CORAM:

VAN ZYL, J

HEARD ON:

26 APRIL 2023

DELIVERED ON: 12 MAY 2023

- [1] This is an application in terms whereof the respondents are called upon to show cause, if any, why they should not be found guilty of contempt of court, together with auxiliary relief, in relation to the interdict order issued by Van Rhyn, J on 14 April 2023 under the above case number. The application was brought on an urgent basis, for which condonation is being sought in terms of prayer 1 of the Notice of Motion.
- [2] At the time of the hearing of the application, Mr Grobler, assisted by Ms Ngubeni, who appeared on behalf of the applicant, indicated that although there was no appearance on behalf of the first to sixth respondents, the applicant and the first to sixth respondents have agreed that the application, in so far as the first to sixth respondents are concerned, be postponed for hearing to Thursday, 25 May 2023. Mr Grobler consequently requested that an order be made accordingly.
- [3] The answering affidavit of the seventh respondent in opposition to the relief sought against the seventh respondent, had been filed on 24 April 2023 and consequently served before me during the hearing of the application. Mr Benade appeared on behalf of the seventh respondent.
- [4] Mr Grobler indicated that considering the substantive averments contained in the seventh respondent's answering

affidavit, the applicant is requesting an opportunity to file a replying affidavit in response thereto. Mr Grobler consequently requested that the application against the seventh respondent also be postponed for hearing to 25 May 2023.

[5] Without going into the details thereof, it is to be indicated that I raised the following two issues:

1. The urgency and/or the degree of urgency of the application.
2. The fact that a contempt of court order is being sought against the seventh respondent who was not cited as a party in the proceedings which served before Van Rhyn, J and that the interdict order was consequently not made against the seventh respondent.

[6] Both Mr Grobler and Mr Benade addressed me shortly on the aforesaid two issues. At the time I was considering the option of adjudicating the urgency and/or the merits of the application in relation to the seventh respondent in order to prevent a situation where the seventh respondent is to be “dragged along” in the application in circumstances where it may eventually be found that the application against her was fatally defective from the inception thereof.

[7] Mr Grobler urged me not to deal with the application in a piecemeal manner, but to grant the applicant an opportunity to file a replying affidavit in response to the seventh respondent’s answering affidavit. He submitted that the proposed replying

affidavit may contain essential averments in response to the substantive allegations made by the seventh respondent, which may have a crucial impact on the merits and on the outcome of the application against the seventh respondent.

- [8] In the alternative, in view of the fact that I was considering adjudicating the urgency and/or the merits of the application in relation to the seventh respondent on the papers as they stood at the time, Mr Grobler requested that the applicant at least be granted an opportunity to file short heads of argument pertaining to the question whether the relief which is being sought against the seventh respondent is competent in the abovementioned circumstances. I consequently granted both the applicant and the seventh respondent leave to file such heads of argument, which both parties duly filed on 28 April 2023 as agreed in court.
- [9] I requested the parties to agree upon dates for purposes of a postponement of the application and the filing of further papers, should I conclude that leave is to be granted to the applicant to file a replying affidavit, as requested by Mr Grobler.
- [10] I duly considered the contents of the papers as they served before me on 26 April 2023, in conjunction with counsels' oral arguments. I have also given due consideration to the arguments advanced in the applicant's and seventh respondent's respective heads of argument. It became evident to me that considering the essential and substantive nature of the allegations made by the seventh respondent in

her answering affidavit, it would be in the interest of justice that the applicant indeed be granted an opportunity to file a replying affidavit thereto so that all relevant facts and circumstances can serve before court, duly ventilated, in order to ensure a proper adjudication of the application.

[11] I consequently intend to grant the applicant leave to file a replying affidavit in response to the seventh respondent's answering affidavit and to postpone the totality of the application to 25 May 2023, being the date agreed upon between the applicant and the first to sixth respondents. Mr Benade, upon my enquiry pertaining to a suitable date should I decide to postpone the application in relation to the seventh respondent as well, indicated that the date of 25 May 2023 will also suit him.

[12] The date as agreed between the applicant and the seventh respondent for the filing of the replying affidavit, should I grant leave thereto, has since passed. I, however, accept that the parties would be able to agree to a new date for purposes thereof.

[13] A further aspect which I raised during the hearing of the application, is the necessity, or not, for the applicant to file a transcribed record of the proceedings which served before Van Rhyn, J on 14 April 2023, since the *viva voce* evidence which were presented constituted the basis upon which Van Rhyn, J granted the interdict order relevant to the present application. In my view it is not only custom that a transcribed record of such evidence is to be filed by the applicant in

circumstances where *viva voce* evidence was presented, but it is also essential. The *viva voce* evidence was presented in the stead of a founding affidavit and consequently there has to be a transcribed record thereof. I therefore intend also making an order in this regard.

[14] I deem it necessary to specifically record that I have not determined the issue of condonation as prayed for in prayer 1 of the Notice of Motion. In my view it will be proper for the next court to adjudicate upon the said issue when all the papers have been filed.

[15] I wish to also pertinently record that nothing contained in this judgment is to be seen or considered to be an expression of my opinion or view regarding the urgency and/or merits of the application.

[16] Considering all the aforesaid facts and circumstances and the order I am to make, I deem it appropriate that the costs of 26 April 2023 stand over for later adjudication.

Order:

[17] The following order is consequently made:

1. The totality of the application, hence against the first to seventh respondents, is postponed for hearing to Thursday, 25 May 2023.

2. Leave is granted to the applicant to file a replying affidavit in response to the answering affidavit filed by the seventh respondent.
3. The applicant is ordered to forthwith file a transcribed record of the proceedings under case number 1852/2023, which served before Van Rhyn, J on 14 April 2023.
4. The costs of 26 April 2023 stand over for later adjudication.


C. VAN ZYL, J

On behalf of the applicant:

Adv. S. Grobler SC
Assisted by:
Adv. T. Ngubeni
Instructed by:
SMO Seobe Attorneys Inc
BLOEMFONTEIN

On behalf of the 7th respondent:

Adv. H. J. Benade
Instructed by:
Symington & De Kok
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