



**IN THE HIGH COURT OF SOUTH AFRICA
(EASTERN CAPE DIVISION, MAKHANDA)**

Case No: 1278/2023

In the matter between:

CHEP SOUTH AFRICA (PTY) LTD

APPLICANT

and

SANGO M RAYAN aka SANGOLINYE NGQUNGWANA

FIRST RESPONDENT

MONWABISI PATRICK BOOI

SECOND RESPONDENT

BANDILE MANYATI

THIRD RESPONDENT

LORANCE FELIX

FOURTH RESPONDENT

LUKHANYO JACK

FIFTH RESPONDENT

SIVUYILE MABOKELA

SIXTH RESPONDENT

MNYAMEZELI NZELANE

SEVENTH RESPONDENT

SAKHUMZI JAKAVULA aka SAKHUMZI MANCOBA

EIGHTH RESPONDENT

JAYMO WILLIAMS

NINTH RESPONDENT

UNLAWFUL PROTESTORS

TENTH RESPONDENT

SOUTH AFRICAN POLICE SERVICES

ELEVENTH RESPONDENT

JUDGMENT

Bloem J

[1] On 25 April 2023 this court issued a rule *nisi* as a matter of urgency calling upon the first to ninth respondents to show cause why they should not be interdicted and restrained from threatening, intimidating or assaulting the applicant's employees; subcontractors; suppliers and personnel who were attending to work or entering or exiting the applicant's premises and from entering, interfering with or otherwise disrupting the applicant's business operations. They were also interdicted from interfering with the free flow of traffic to and from the applicant's premises. The return date has been extended.

The order operated as an interim interdict with immediate effect pending the finalisation of this application. Save for the fifth respondent, the remaining respondents opposed the application and delivered answering affidavits. Despite not delivering an answering affidavit, the fifth respondent made submissions at the hearing of the application.

[2] The first respondent described himself as a member of the National Union of Public Service and Allied Workers. The applicant described the tenth respondent as “unlawful protestors”. It also described the first to ninth respondents as the leaders of the unlawful protestors. I shall herein refer to the first to ninth respondents as “the respondents”. The eleventh respondent is the South African Police Service.

[3] Although the applicant’s registered office is in Durban, this matter relates to its business operations at its premises in Gqeberha (the premises). The applicant is an international company which specialises in wooden pallet administration, including leasing and repairing pallets. The operation conducted at the applicant’s Gqeberha premises only relates to the issuing and returning of pallets. The applicant’s case was that the respondents were employees of Contracta-Force Corporate Solutions (Pty) Ltd (C-Force). The applicant engaged C-Force as a service provider. C-Force used its own employees on the premises.

[4] The confrontation between the applicant and the respondents as well as other employees started during 2022. On 6 August 2022 the respondents and other employees of C-Force engaged in an unprotected strike at the premises during which refuse and tyres were burnt. Their conduct caused work stoppages at the premises and accordingly obstruction to the applicant’s business operations. On 2 September 2022 C-Force dismissed its employees who were engaged in the strike, including the respondents. They challenged their dismissal in the CCMA, but on 30 January 2023 the commissioner ruled that the CCMA lacked jurisdiction to arbitrate the dispute between the employees on the one hand and the applicant and C-Force on the other hand. The commissioner advised the employees to approach the Labour Court to have the dispute adjudicated, but, by 24 April 2023, when this application was instituted, they had not instituted proceedings in the Labour Court against either the applicant or C-Force.

[5] On 1 April 2023 an email in the second respondent's name was sent from the first respondent's email address to the applicant, informing it that the applicant's employees would gather and picket at the premises from 12 to 14 April 2023. At about 09h00 on 12 April 2023, a group of approximately 25 to 30 persons, including the respondents, started blockading the entrance to the premises and preventing its customers from gaining access thereto. They shouted at the drivers of the trucks of the applicant's customers to leave the premises. The applicant's regional operations manager, Wiaan Benadie, attempted to reason with the second respondent and advised him that they should not be blockading access to and from the premises and thereby causing disruption to its business. The second respondent said that they had a right to be there. Two policemen arrived on the scene but were unable to stop the respondents and others from blockading access to the premises. When the first respondent was advised that employees should not conduct themselves in a manner that caused disruption to the applicant's operations, he demanded paperwork prohibiting them from standing where they had gathered and from blockading access to and from the premises. They continued blockading the entrance and exit to the premises until about 13h00.

[6] The respondents, together with individuals unknown to the applicant, gathered again from about 09h30 on 13 April 2023 and once again blockaded access to and from the premises, which prevented the free flow of vehicles. The conduct of the respondents, together with others who disrupted the applicant's operations, was reflected in photographs which were attached to Mr Benadie's founding affidavit. The first and second respondents handed a list of demands to Mr Benadie, with the threat to be back on 21 April 2023 if their demands were not met by then. They dispersed at about 11h15 on that day.

[7] When a group of about 25 persons gathered outside the premises from approximately 09h30 on 21 April 2023, Mr Benadie once again advised them to pursue legitimate legal processes and to stop their unlawful conduct. They dispersed. However, at approximately 12h40 on that same day, a more hostile group of persons, including the respondents, gathered outside the premises. They blocked access to and from the premises, resulting in a truck not being able to enter the premises. Mr Benadie arranged for the truck to enter the premises through an exit gate, but members of the group blocked

both the entrance and the exit gates. Members of the group intimidated the truck driver who drove off. When Mr Benadie addressed the group, they told him to call the police and obtain an interdict. They told him that they would not leave and that no truck would be granted access to or from the premises. The applicant approached its attorneys who, after having made a written demand to the respondents to give an undertaking that they would stop their unlawful activities, launched the present application when the respondents had failed to give such an undertaking. The interim order was granted on 25 April 2023.

[8] The respondents opposed the application, primarily on the basis that the applicant, and not C-Force, was their employer. They contended that they “*were deemed employees of CHEP SA (PTY) LTD in terms of section 198(3)(i) and (ii) of the LRA even before the arrival of C-Force.*” On the merits, the respondents denied that they acted in an unlawful manner prior to the granting of the interim order. The respondents have accordingly raised two issues for determination. The first is whether the applicant is their employer. The second issue is whether they have conducted themselves in an unlawful manner, as alleged by the applicant.

[9] I am of the view that it is immaterial whether the respondents were employed by the applicant or C-Force. The purpose of the application was to stop and prevent what the applicant perceived to have been unlawful conduct on the part of the respondents and others. A business entity has a right to conduct its business free of interference, disruption and threats to its employees and customers. Such an entity has the right to protect its business operations. The applicant’s case was that its business operations were adversely affected by the respondents’ alleged unlawful conduct. It accordingly had a right to protect its business operations. The right not to have its business operations disrupted exists irrespective of whether the applicant was the respondents’ employer. By approaching this court, the applicant sought an order that its business operations be protected. I am satisfied that when the applicant approached the court, it had established a right worthy of protection. I will now determine whether the applicant has demonstrated that the respondents interfered with the applicant’s right by having unlawfully disrupted its business operations, as alleged by the applicant, entitling the applicant to protection in the form of an interdict.

[10] The respondents denied that they were engaged in an unprotected strike, claiming that there was “*nothing illegal or unlawful about the gathering that the workers held*” and that they did not prevent persons or vehicles from having access to and from the premises. They denied that the “*gathered workers [disrupted] the applicant’s business operations because vehicles were allowed to come in and out of its premises. There were no threats to violence*”. The first respondent stated that at approximately 10h35 on 12 April 2023 he received a call from Mr Benadie who requested him to “speak to the workers because they were having an unlawful protest outside the premises of the employer”. He said that, upon arrival, he established that the workers had been granted permission by the Nelson Mandela Metropolitan Municipality (the municipality) to gather outside the premises. The first respondent did not say what he did after realising that the municipality had permitted the gathering. The applicant’s case in that regard was that the first respondent made common cause with the other respondents regarding the gathering.

[11] Had the respondents delivered their answering affidavits before the interim order was granted, this court, given the dispute as to the facts, would have had to decide whether to grant the interim interdict by taking the facts as set out by the applicant together with any facts set out by the respondents which the applicant could not dispute, and to consider whether, having regard to the inherent probabilities, the applicant could on those facts obtain final relief at the trial.¹ As it turned out, the respondents did not deliver answering affidavits before the grant of the interim interdict. They made submissions on the facts set out in the applicant’s founding affidavit regarding the jurisdiction of this court. When I issued the interim interdict, I was satisfied that the applicant had established the requirements of an interim interdict entitling its business to be protected pending the return date.

[12] Now that the applicant seeks a final interdict against the respondents, the consideration is different. A final interdict may be granted if those facts in the applicant’s affidavit which had been admitted by the respondents, together with the facts alleged by the respondents, justify such an order. However, where disputes raised by a respondent are not real, genuine or bona fide and the court is satisfied as to the inherent incredibility of the applicant’s factual averments, it may proceed on the basis of the correctness of the

¹ *Webster v Mitchell* 1948 (1) SA 1186 (W) at 1189.

facts set out by the applicant and include this fact among those upon which it determines whether the applicant is entitled to the final relief which it seeks.²

[13] As pointed out above, the respondents denied that they acted unlawfully when they were outside the premises on 12, 13, 14 and 21 April 2023. The first respondent said that on 12 April 2023 Mr Benadie called him to talk to the workers, including the respondents, on their own version, who “*were having an unlawful protest*” outside the premises. It is accordingly common cause that the respondents protested on 12 April 2023. Although the respondents alleged that the municipality granted them permission to protest at the premises on 12 to 14 April 2023, the documents relating to the permission granted by the municipality, showed that on 4 April 2023 the second and fourth respondents, on behalf of the “*Illegally dismissed workers of CHEP*”, applied for 68 employees to protests at the premises between 08h00 and 17h00 on 12 April 2023. On 6 April 2023 the municipality and the second respondent, representing the “*dismissed Chep workers*”, concluded an agreement in writing wherein the respondents were granted permission for the gathering to take place at the premises between 08h00 and 13h00 on 12 April 2023.

[14] In clause 18 of the agreement the parties agreed to cause “no disruption”. In the context of the application for permission to gather, the “no disruption” must be interpreted to mean that the respondents undertook not to disrupt the applicant’s business operations during their gathering. The respondents did not stick to their undertaking. Mr Benadie would not have called the first respondent if the activities of the respondents did not disrupt the applicant’s business operations. Mr Benadie said that, instead of them protesting or demonstrating in an area that did not cause any disruption to the applicant’s business, they did the opposite by causing an obstruction to the flow of vehicular traffic to and from the premises. The respondents’ response to Mr Benadie’s allegation in that regard was a bald denial. The events of 13 and 14 April 2023 that Mr Benadie described in his founding affidavit also attracted a bald denial. On the applicant’s version, the respondents blocked a truck from entering the premises on 21 April 2023. That evidence was similarly met with a bare denial and argumentative material, the respondents contending that they could not have acted in that fashion in the presence of members of the South African Police Service. In my view, the respondents’ denial of the facts set out

² *Plascon Evans Paint Ltd v Riebeeck Paints (Pty) Ltd* 1984 (3) SA 620 (AD) at 634E-635C.

by the applicant relating to their conduct on 12, 13, 14 and 21 April 2023 is so far-fetched that it must be rejected on the papers. The decision whether a final interdict should be granted must accordingly be made on the basis of the facts set out in the applicant's affidavits.

[15] The respondents submitted that, on the applicant's own version, the conduct about which it complained has stopped since the interim order was granted. This court should accordingly not confirm the rule nisi and thereby making the interdict final. In his founding affidavit Mr Benadie said that the applicant was concerned about statements by the respondents that "the applicant will not be allowed to resume [its business operations] until their demands are met" and that they would continue with their unlawful conduct "until such time as their demands are met". In his replying affidavit Mr Benadie said that, pursuant to the granting of the interim order, "there has been no further gatherings which have taken place. The interim order was accordingly necessary and effective deterring the respondents from their unlawful conduct ... ". The interim order accordingly has had the desired effect. The applicant nevertheless sought the interim order to be made final because "having it made final, would continue to have the desired effect".

[16] Mr de la Harpe, counsel for the applicant, submitted that, if regard is had to the confrontation between the applicant and the respondents in 2022 and 2023, it is highly probable that the unlawfulness would repeat itself in the near future, hence the applicant's contention that a final interdict "would continue to have the desired effect". An interdict is not the proper remedy where there is no reasonable apprehension that the infringement complained of will be repeated.³

[17] What has been quoted above from Mr Benadie's affidavits was the only evidence relevant to the applicant's apprehension of harm. An applicant is required to set out facts to show that he has good grounds for fearing that he will suffer irreparable harm unless a final interdict is granted. The applicant has not set out facts from which it could reasonably be inferred that the respondents were about to perform an act which would be in violation of the applicant's right to conduct its business without unlawful interference by the respondents. I am not satisfied that it could reasonably be concluded that the events of

³ *Condé Nast Publications Ltd v Jaffe* 1951 (1) SA 81 (C) at 86.

2022 and 2023 was evidence of an intention on the part of the respondents to continue what they had done in the past two years.⁴ In the result, it would not be proper, on the facts (or absence thereof) of this case, to confirm the rule nisi that was issued on 25 April 2023. It must accordingly be discharged.

[18] The discharge of the rule does not mean that the respondents were substantially successful in the litigation. The applicant was entitled to approach the court to obtain an interim order to protect its business operations against unlawful conduct of the respondents and other unlawful protestors. The respondents persisted with their denial of unlawful conduct up to the hearing, despite the overwhelming evidence against them. Had they not acted in that fashion, litigation would not have taken place with its attendant legal costs. In the circumstances, it would be just and equitable to order the respondents to pay the applicant's costs of the application. The first respondent sought to avoid a costs order against himself by submitting that it was Mr Benadie who called him to the premises. It is correct that the first respondent's attendance at the premises was as a result of a request by Mr Benadie for his presence to assist with the unlawful activities of the respondents. However, he did not assist to get the other respondents to stop their unlawful conduct. To the contrary, on the applicant's version, he made common cause with their unlawful conduct. The costs against the respondents shall include the costs of the hearing on 25 April 2023 when the respondents opposed the granting of the rule nisi, the costs of the hearing on 16 May 2023 and 7 November 2023, but shall exclude the costs of the hearing on 5 October 2023 when the application was postponed because the respondents had not received the application papers. Each party shall pay its or his own costs occasioned by the postponement of the hearing on 5 October 2023.

[19] In the result, it is ordered that:

1. The rule nisi granted on 25 April 2023 is discharged.
2. The first to ninth respondents shall pay the costs of the application, jointly and severally, the one paying the other to be absolved, such costs to include the costs of the hearing on 25 April 2023, 16 May 2023 and 7 November 2023.

⁴ *Stauffer Chemicals Chemical Products Division of Chesebrough-Ponds (Pty) Ltd v Monsanto Company* 1988 (1) SA 805 (T) at 809E-G.

3. Each party shall pay its or his own costs occasioned by the postponement of the hearing on 5 October 2023.

GH BLOEM
JUDGE OF THE HIGH COURT

APPEARANCES

For the applicant:	Mr DH de la Harpe SC, instructed by Cox Yeats, Durban and Netteltons Attorneys, Makhanda.
For the respondents:	In person, save for the seventh respondent.
Date heard:	7 November 2023.
Date of delivery of the judgment:	21 November 2023.