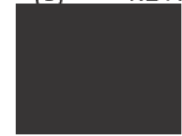




**IN THE HIGH COURT OF SOUTH AFRICA
(GAUTENG DIVISION, JOHANNESBURG)**

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



SIGNATURE

DATE: 18 March 2024

Case No. 2024-00063

In the matter between:

DEPARTMENT OF SOCIAL DEVELOPMENT

Applicant

and

**THE NON-PROFIT ORGANISATIONS REGISTERED
WITH THE APPLICANT AND LISTED IN ANNEXURE "A"
TO THE APPLICANT'S FOUNDING AFFIDAVIT**

First Respondent

**ANY OTHER NON-PROFIT ORGANISATION NOT
REGISTERED WITH THE APPLICANT AND / OR ANY
PERSON WHO EMBARKS ON AN ILLEGAL PROTEST
BY SITTING-IN AT THE OFFICES OF THE APPLICANT**

Second Respondent

JUDGMENT

WILSON J:

1 On 15 March 2024, I dismissed an application brought by the Department for Social Development for a wide-ranging interdict in restraint of protest action set to take place at or near its Johannesburg offices on 18, 19 and 20 March

2024. I said at the time that my reasons would follow in due course. These are my reasons.

- 2 There are three principal bases upon which I was bound to refuse the relief sought. First, the Department had failed to establish a rational factual link between the respondents and any reasonably anticipated unlawful activity. Second, the group of individuals cited as the second respondent was incapable of meaningful definition, and in any event could only be identified, if at all, once any unlawful conduct had actually taken place. It followed that the second respondent could not have been meaningfully informed of the breadth and application of the order before the individuals comprising it were identified. Third, the relief itself was startlingly overbroad, and plainly invasive of the constitutional rights to assemble, to demonstrate, to picket, and to present petitions.

No link established between the respondents and reasonably anticipated unlawful activity

- 3 In *Commercial Stevedoring Agricultural and Allied Workers' Union v Oak Valley Estates (Pty) Ltd* 2022 (5) SA 18 (CC) ("*Oak Valley*"), at paragraph 39, the Constitutional Court made clear that interdicts in restraint of unlawful protest activity may only be granted where a factual link between an individual respondent and actual or threatened unlawful conduct is shown. Without such a link, there can be no reasonable apprehension of harm, and accordingly no grounds for the imposition of an interdict.
- 4 In this case, the Department built its case upon a poster, apparently disseminated among non-profit organisations registered with it, which called

for a sit-in at its offices on 18, 19 and 20 March 2024, in protest against the Department's plan to establish a panel charged with the distribution of resources to non-profit organisations who provide social services that the Department itself lacks the capacity to deliver.

- 5 The poster bears the hashtag “#Gauteng NPO’s”. It was on this slender basis that counsel for the Department submitted that it was entitled to interdictory relief against each of the 450 or so entities on its database of non-profit organisations registered with it, or providing services to it. I rejected that submission. The poster is not a statement of intent. It is a call to action. Even assuming that the poster is a call to unlawful action, it provides no basis for the reasonable apprehension that each one of the 450 organisations involved in this application are about to embark upon the advertised sit-in. There is no basis on the papers for concluding that each of those organisations had seen the poster, let alone that they intended to answer its call.
- 6 In order to establish the factual link required in *Oak Valley*, more was plainly required than mere registration with the Department as a non-profit organisation or as a service provider. The Department was unable to provide any further basis to establish such a link.
- 7 It was argued before me that *Oak Valley* does not require such a link where the individuals being placed under interdict have deliberately sought to obscure their identities. However, I do not think that *Oak Valley* goes that far. Paragraph 42 of the *Oak Valley* decision says that “where a strike is beset by unlawful conduct and large numbers of protesters or strikers deliberately conceal their identities – for instance, through the wearing of masks – a Court

may be entitled to more readily conclude that an applicant has a reasonable apprehension that the participants in the strike will cause it injury". That plainly does not mean that the requirement of a rational factual link between the individual sought to be interdicted and the unlawful conduct complained of can be dispensed with altogether. What it means is that a court need not insist on the direct and individual identification of a person within a group of people who have disguised themselves for the purpose of engaging in unlawful activity, if there are other facts from which that person's participation in the unlawful activity can be inferred.

- 8 In any event, the attempt at disguise to which the Department adverted was an exhortation on the poster that participants in the sit-in should wear face masks. The exhortation to wear face masks at gatherings – especially at a gathering of people working for non-profit organisations who regularly come into contact with the old, the frail and the sick – is plainly hygienic in intent. It is not a call to obscure the identities of the participants.
- 9 For all these reasons, there was no basis on which I could grant any interdictory relief against the first respondents. No factual link between any of them and any identified unlawful activity – and accordingly no reasonable apprehension of harm – was established.

The second respondents

- 10 No relief at all could be granted against the second respondents, because nobody can say who they are. In *Kayamandi Town Committee v Mkhwaso* 1991 (2) SA 630 (C) at 634G-J Conradie J emphasised that court orders may only be granted against clearly defined parties who can be identified in

advance of the institution of a lawsuit. This does not mean that each party must be individually identified. Persons may be joined to a lawsuit as members of a group (for example, all the occupiers of a particular erf are regularly made parties to eviction proceedings). However, where they are not individually identified, the group comprising the parties to the lawsuit must be clearly defined and easily ascertainable, such that notice can meaningfully be given to the members of the group in advance.

- 11 In this case, the group comprising the second respondents is notionally inclusive of anyone who chooses to participate in the sit-in if and when it goes ahead. There is no way that these individuals can be identified in advance, and accordingly no meaningful sense in which they can be given notice of the application for the interdict. Again, then, there can be no reasonable apprehension that any one of the multitude who could potentially comprise the second respondent will conduct themselves unlawfully. As a result, no relief can be granted against that group.

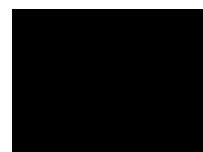
The overbreadth of the relief

- 12 The Department claimed an interdict of startling overbreadth. It sought more than the mere restraint of a sit-in. The notice of motion seeks to restrain any “interference” with or “obstruction” of the Department’s activities at its main offices; any “picketing” action; any “protest” action; and incitement of any “picketing” or “protest” action. The problem with this relief is that it embraces a wide range of conduct, some of which may be perfectly lawful. In particular, the right to picket is specifically protected in section 17 of the Constitution, 1996. A picket of any sort entails some interference with access to or egress

from a place of business. There is of course a line between lawful picketing and unlawful disruption or interference, but the Department made no effort to suggest where that line might be. In addition, while “protest” action – which the Department also seeks to restrain – is not specifically protected by section 17 of the Constitution, the rights to “assemble” and “demonstrate” are. “Protest” action clearly encompasses assembly and demonstration, and in the absence of any effort in the Department’s notice of motion to identify a boundary between unlawful protest action that may properly be restrained, and lawful demonstration and assembly that may not be restrained, no relief could be granted at all.

Order

- 13 In sum, the Department sought overbroad relief that was plainly invasive of constitutional rights against an ill-defined group of people. Where members of the group sought to be restrained were identified, the Department could not establish a link between those individuals and any unlawful conduct that had caused it harm, or was reasonably anticipated to do so.
- 14 It was for those reasons that I dismissed the application, with no order as to costs.



S D J WILSON
Judge of the High Court

This judgment is handed down electronically by circulation to the parties or their legal representatives by email, by uploading to Caselines, and by publication of the

judgment to the South African Legal Information Institute. The date for hand-down is deemed to be 18 March 2024.

HEARD ON: 15 March 2024

DECIDED ON: 15 March 2024

REASONS: 18 March 2024

For the Applicant: K Nondwangu
Instructed by the State Attorney

For certain of the
First Respondents: W Sithole
Instructed by Webber Wentzel