

REPUBLIC OF SOUTH AFRICA



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

Case Number: 2024-008639

(1)	REPORTABLE: NO
(2)	OF INTEREST TO OTHER JUDGES: NO
(3)	REVISED: NO
DATE 15/04/2024	

In the matter between-

LIBERTY TWO DEGREES LIMITED

First Applicant

2 DEGREES PROPERTIES (PTY) LIMITED

Second Applicant

and

YVONNE MAGUDU

Respondent

ORDER

- a. This application is urgent and is dealt with as such.
- b. The respondent is declared to be in contempt of the order of Ford AJ dated 13 February 2024 (the order).

- c. The respondent is sentenced to a period of incarceration of 60 days to be administered by those officers in the police and prison authorities who are responsible for the committal of the respondent and administration of the sentence which includes the taking of the respondent into custody and her processing at a center of incarceration.
- d. The sentence referred in paragraph (b) is suspended for a period of five years on the condition that the respondent does not, during such period, conduct herself so as to be in breach of the order; in the event of such breach being established, she shall immediately be committed to prison to serve the sentence imposed.
- e. The costs of this application must be paid by the respondent on the scale as between attorney and client.

JUDGMENT

FISHER J

Introduction

- [2] This is an application brought urgently in order to address the alleged contempt of an order of this court handed down in the urgent court by Ford AJ (the order). In terms of the order the respondent was interdicted against, inter alia, engaging in harassment and threatening behavior directed at the applicants and their employees.

Background facts

- [3] The first and second applicants are property owning companies; the first being the sole shareholder of the second. The first is also a wholly owned subsidiary of the Liberty Group Ltd.

- [4] On 24 May 2023 the respondent, Ms Magudu, who was at that stage unknown to the applicants, arrived at the applicants' head office in Sandton. She was unannounced.
- [5] She advised that she was the holder of a title deed in respect of an immovable property owned by the first applicant. She stated that she wished to hand the title deed to the Chief Executive officer (CEO) of the first applicant, Ms Amelia Beattie.
- [6] The title deed related to a property which had been owned by the first applicant but which had subsequently been disposed of. The title deed did not convey ownership of the property to the respondent.
- [7] The respondent also presented what purported to be a share certificate dated 02 January 2018 which reflected that she owned 3 million shares in the second applicant. The applicants confirm that this position is manifestly false and the certificate is not genuine.
- [8] The respondent also attended at the applicant's bankers, Standard Bank seeking that she be given access to and signing rights to the bank accounts of the applicants. In addition, she has on two occasions sought to lodge fraudulent documents in respect of her alleged shareholding in the second applicant.
- [9] The respondent repeatedly entered the premises of the applicants and had to be escorted off the property by security. She furthermore embarked on a campaign whereby she sent text messages and emails and made telephone calls to Ms Beattie that were insulting and threatening in their tone and content.
- [10] The applicants contended that they and their personnel were being harassed and that they had no option but to seek interdictory relief. They thus filed an urgent application for interim relief in this court.
- [11] The respondent was afforded due notice of the interdictory proceeding. In response she filed a document which purported to be notice of her opposition.

It notified her opposition and, in addition, set out a number of complaints in relation to the applicants including that she and her child had been evicted from the property in issue and that she had not been afforded her shareholder status and rights flowing therefrom.

- [12] The document also contained a letter addressed to Ms Beattie which demanded as follows:

“I need R 30 000 000 with a basic salary of R 550 000 monthly or R27 000 000 with a basic salary of R650 0000 monthly, or R16 000 000 with a basic salary of R1.2 000 000 monthly. At least I don't request to be granted the whole R3 billion, or permit me to utilize my bank accounts accordingly.”

- [13] The allegations in the document were not made under oath. The respondent did not appear at the urgent hearing which served before Ford AJ. After hearing the applicants, Ford AJ handed down an interdict which in essence restrained the respondent from: entering the offices of the applicants; making threats against or harassing the applicants' executives and staff; interfering with the shareholding and directorships of the applicants in the registration documents at the Companies and Intellectual Property Commission (CIPC) and interfering with the applicants' bank accounts and granted punitive costs against her.

- [14] The order was served on the respondent by email on 15 February 2024, such service being permissible under the order.

- [15] The respondent acknowledged receipt thereof by sending an email to Ms Beattie and Jonathan Sinden, the Chief Operations Officer (COO) of the applicants on 18 February 2024 in which opened in the following manner:

“Greetings Amelia and Team

In regards to this "court order ", you guys are really playing games in the first degree. I mean, this is the first document with different headings. Ahaaa! Everyone can see that you really are wasting your time and mine. You cannot keep on evicting me, meanwhile you have expelled me without the support of the law months ago.”

- [16] This was followed up the next day with a second email addressed to Ms Beattie and Ms Reniera Naidoo, the candidate attorney in the employ of the applicants' attorneys which began:

"Greetings Renira Naidoo/Amelia Beattie and Team

Please re- think this fraudulent court order or filing sheet, with a court online cover page on the 3rd page of this page, what is all this? You guys are really funny now, stop it with this game."

- [17] Two days later the respondent sent a further email in which she accused the applicants of being "swindlers" and expressed that Ford AJ is not a motion judge but only deals with Road Accident Fund default judgment court. Ms Beattie was referred to as a "disgrace".
- [18] On 26 and 29 February 2024 the respondent sent further text messages to Ms Beattie. In the text of 26 February, the respondent suggests that Ms Beattie should constantly be having to look over her shoulder for signs of her (the respondent).
- [19] The text message of 29 February 2024 again accuses Ms Beattie of fraud and even brutality.
- [20] Further text messages in the same vein were sent to Ms Beattie on 1, 2 and 3 March 2024.
- [21] The text message of 3 March 2023 states that the respondent "won't stop until you do the right (sic)". And warns "Evil will never leave you cause you pay evil for good."
- [22] On 6 March 2024, the respondent addressed a text message to Mr Sinden accusing him of being "covetous and brutal." Additionally, she accused the executives of the applicants of "dancing with the devil."
- [23] Most troubling, is a reference made to Mr Sinden's family which reads:

"you have kids that you dear love and take care of, however you have decided to oppress mine and I, as a father. How would you feel if GOD would take them away

from you would you survive or be sane for the rest of your life, or how would you cope all your life should you loose (sic) your job?"

[24] On the same day, Ms Beattie received a text message making similar accusations of dishonesty.

[25] On 8 March 2024 the respondent sent a text message to Ms Beattie in terms of which she stated:

"You know what to do. To remove that sin engraved on you four (sic) head of covetousness, which everyone gaze (sic) at on a daily basis when you come in and when you go out. Thanks. What time should I expect my money, long awaiting?".

[26] The respondent has, thus, been in constant contact with the applicants since they notified her of the order. The unprovoked communications have occurred on almost a daily basis.

This contempt application

[27] The applicants allege that they had no option but to bring this application for contempt. They argue that the respondent will, by her own indication not stop unless deterred.

[28] The contempt application was set down for hearing on Tuesday 2 April 2024.

[29] The day before the hearing the respondent delivered a document which purported to be notice of opposition.

[30] Similarly to the document filed in the application for the interdict, this purported notice contains demands and allegations. Ms Beattie is accused of stalking the respondent and being obsessed with her.

[31] On the day set down of the hearing the applicants' counsel Ms Bosman appeared in court and addressed the notice of opposition. The applicant notwithstanding the filing of the document did not appear.

[32] I, accordingly, stood the matter down asked that the applicants attorneys attempt to communicate with the respondent and inform her that I was awaiting

her attendance. I asked also that they communicate the seriousness of the matter to her.

- [33] Pursuant to this request the applicants' attorneys sent the respondent a text message which read as follows:

"Good day Madam On behalf of Moody & Robertson attorneys we would like to let you know that we are appearing on behalf of the Applicants today in Case no. 2024-00863. We have noted your Notice of Intention to Defend and would like to let you know that the matter is being heard in court 9E in Johannesburg High Court. Please note that an order may be granted for your incarceration today, Please, kindly make an appearance to speak on your behalf, Kind regards"

- [34] The respondent responded:

"Hi. Why was 9E court room not mentioned on the order. The time mentioned on the order was 10:00 am and you decided to let me know of the court room at 11:27am. What kind of the law is this? You know you are wrong and you know the truth about all that you're doing. Thanks."

- [35] About a half hour later the following further message was sent by the applicants' attorneys:

"Good day madam,

The Honourable Judge is still busy and the above mentioned matter has still not been heard. Please kindly make an appearance to speak on your behalf, Kind regards."

An hour later the respondent sent a message stating

"What about 10:00am the time that you agreed on. What changed it. Why postponed from 10:00am to anytime when the Judge becomes available? What about other people's busy schedules?"

- [36] In response, the applicants' attorney explained the position thus:

"Good day Madam There are 45 matters on the Urgent court roll today. The Honourable Judge is hearing each matter as they appear on the court roll, today. This is available

online, this court roll did not get published in advance. There was no indication of which court we would be in until this morning. Kind regards”

[37] At approximately 14h00 the respondent replied:

“No ruling could change the court date and recent time for other matters postponed. Be guarded at it. Thanks”

[38] I was loathe to entertain a matter of this seriousness without hearing from the respondent, especially in light of the fact that she was engaging with the applicants’ attorneys. I thus stood the matter down to the following day, 03 April and again imposed upon the applicants’ attorneys to convey to the respondent that I wished her to appear in court and address me on her defence.

[39] Pursuant to this request the applicants’ attorneys addressed a text message to the respondent on the afternoon of 02 April 2024 which read as follows:

“Good afternoon Madam

On behalf Moodie & Robertson attorneys, with regard to Case No., 2024-008639, we would like to inform you that the Honourable Judge Fisher has stood the matter down until tomorrow morning at 10;00am, in the same court, Court room 9E. Please kindly take note that the Honourable Judge Fisher has directed you to attend tomorrow morning regarding the abovementioned matter. Please let us know if you require any further information. Kind regards”

[40] The response of the respondent was as follows:

“Hi. The motion/ court order that I received had today's ruling, time and date with no court room and a different judge that you now mention. Please stop flooding me with your non jurisdiction powers. Stop this unfair gameplay and stop wasting my time. I have other engagements in KZN, including Liberty Midlands, and John Ross Junction...My time is valuable to me, I cannot waste it with you. You have bridged (sic) your own motion/ Court by not attending to court twice this with no court room for ruling. What you are telling me now is not on your motion/ court order. What kind of attorneys are you to send fraudulent motions/ court orders with no ruling court rooms, mentioning the times, with no attending schedules by forcing matters through WhatsApp, involving new judges not mentioned on the motions/courts. Fixing errors via WhatsApp with no

fixation module. I just need my money. That is all I need from Amelia Beattie. This is totally illicit. I don't concur. Stop wasting my time by sending false statements to my WhatsApp. I tolerated you for too long You have broken the law by not adhering to your motions/ court orders. No more. bye."

[41] The applicants' attorneys confirmed receipt of this text as follows:

"Good evening Madam

Received, with thanks. Please take note that you may address the Court and Honourable Judge Fisher tomorrow regarding the above, Please, kindly let us know should you require any further information, Kind regards"

The respondent replied that night:

"Stop wasting my time, don't act as if you don't reason. Have you no shame? You don't play court on WhatsApp."

[42] The respondent did not make an appearance at the hearing.

Applicable legal principles - contempt

[43] The applicants must establish the existence of the order, its service on the respondent and the respondent's non-compliance with the order. Once this is done, if the respondent is to avoid being found guilty of the offence contempt, she must furnish to the court evidence raising a reasonable doubt as to whether her non-compliance was willful and mala fide. If she fails to do this then the offence of contempt is established.¹

[44] The burden of proof rests with the applicants. The burden must be discharged beyond reasonable doubt due to the criminal component of the offence and the fact that the applicants seek an order of committal.²

¹ Fakie N.O. v CCII Systems (Pty) Ltd 2006 (4) 326 (SCA) at 338C-339A

² Id at 344H

[45] In this matter, there can be no doubt that there has been service of the order on the respondent. The questions for determination by this court are thus as follows:

- a. Does the conduct of the respondent constitute a breach of the order?
- b. If so, is there reasonable doubt that the breach was willful and in bad faith?

[46] I will now consider each of these questions?

Does the respondent's conduct constitute a breach of the order?

[47] The portions of the order which the applicants allege the respondent to have breached are those directed at the making of threats against or harassing the applicants' executives and staff.

[48] The contact that the respondent seeks to make via messaging, email telephonically and otherwise with the applicants' executives has occurred almost daily since the order came to her notice.

[49] An analysis of the material sent reflect incredulity on the part of the respondent as to the whether the order is genuine or fraudulent.

[50] To the extent that the respondent was genuinely of the belief that the order was a fabrication, this may serve to create some doubt as to her willfulness. I have thus, notwithstanding the failure on the part of the respondent to adduce any evidence, considered this possibility.

[51] The following factors, however, lead me to the view that the respondent was not operating under the genuine belief that the court order was fraudulent or otherwise invalid:

- a. The conduct of the respondent shows her to be aware of the stature of the applicants as companies which hold significant value.

- b. She is told in the applications that the applicants are part of a stable of companies owned and led by a public company of some repute and the tenor of her messages is such that she understands this position.
- c. She saw fit to note her opposition in both the interdictory proceedings and these proceedings which leads me to the view that she regards the proceedings as valid.
- d. She understands that she is dealing with attorneys of considerable repute that represent the applicants.
- e. Those attorneys repeatedly conveyed to her the directive of this court that she should attend and deal with the application.
- f. The respondent does not appear to be an unsophisticated person. Indeed, she presents herself in her dealings with the applicant as a businesswoman of some acumen.
- g. Her protestations as to why she will not take the proceedings of this court seriously emerge as contrived and willfully obtuse.

[52] Accordingly, accepting that the respondent was aware of the order preventing her from conducting herself in a manner that constituted harassment, she could not, to my mind, have been of the belief that the sending of almost daily messaging containing hostile and insulting content was not harassment. This conduct was, to my mind, calculated to harass and intimidate.

[53] The impression created by the respondent's protestations as to the validity of the process is that she seeks to suggest a level of naivete on her part which is inconsistent with her conduct. This contrivance is sinister in itself.

[54] Whilst the content of the messages and emails sent by the respondent after notice of the order are such that there are no overt threats, the sheer volume of the communications and the hostility conveyed therein is such that it is threatening in itself.

[55] This, taken with the communications which resulted in the interdict by Ford AJ is, to my mind, sufficient to invoke a sense of substantial unease and even fear in the recipients. Furthermore, it is clearly calculated to do so.

Conclusion

[56] The respondent is in breach of paragraphs 3.3 of the order of Ford J. The breach is willful and in bad faith. This is established beyond reasonable doubt.

Appropriate penalty

[57] I consider that a suspended sentence of committal will have a chastening effect on the respondent. It seems to me that it is likely to give her some pause for thought and a realization of the gravity of the granting of such an order.

Costs

[58] In such matters which are by their nature founded in a disrespect of the law, costs are usually granted on a punitive scale. There is no reason in this matter why costs should not follow this result.

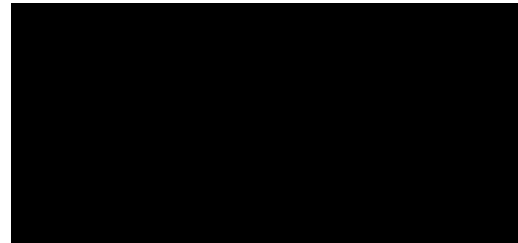
Order

[59] I grant an order which reads as follows:

- a. The application is urgent and is dealt with as such.
- b. The respondent is declared to be in contempt of the order of Ford AJ dated 13 February 2024 (the order).
- c. The respondent is sentenced to a period of incarceration of 60 days to be administered by those officers in the police and prison authorities who are responsible for the committal of the respondent and administration of the sentence which includes the taking of the respondent into custody and her processing at a center of incarceration.
- d. The sentence referred in paragraph (b) is suspended for a period of five years on the condition that the respondent does not, during such period conduct herself so as to be in breach of the order; in the event of such

breach, she shall immediately be committed to prison to serve the sentence imposed.

- e. The costs of this application must be paid by the respondent on the scale as between attorney and client.



FISHER J
JUDGE OF THE HIGH COURT
JOHANNESBURG

This Judgment was handed down electronically by circulation to the parties/their legal representatives by email and by uploading to the electronic file on Case Lines. The date for hand-down is deemed to be 15 APRIL 2024.

Heard: 04 April 2024

Delivered: 15 April 2024

APPEARANCES:

Applicant's counsel:	Adv. P Bosman
Applicant's Attorneys:	Moodie & Robertson Attorneys
Respondent	No appearance