



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

Case Number: 3373/2022

In the matter of:

**LIEUTENANT COMMANDER
SYLVESTER VULANI 'MADALA'MANGOLELE** 1st Applicant

THE MANGOLELE FAMILY 2nd Applicant

PETRUS PHAKAMILE SITHO 3rd Applicant

and

THE STATE 1st Respondent

**INCUMBENT PRESIDENT
MATAMELA CYRIL RAMAPHOSA** 2nd Respondent

**INCUMBENT SPEAKER OF PARLIAMENT
NOSIVIWE NOLUTHANDO MAPISA-NQAKULA** 3rd Respondent

**INCUMBENT CHIEF JUSTICE
RAYMOND MNYAEZELI MLUNGISI ZONDO** 4th Respondent

GOVERNMENT EMPLOYEE PENSION FUND 5th Respondent

In re:

**LIEUTENANT COMMANDER
SYLVESTER VULANI 'MADALA'MANGOLELE** Plaintiff

and

THE STATE	1 st Defendant
INCUMBENT PRESIDENT	
MATAMELA CYRIL RAMAPHOSA	2 nd Defendant
MINISTER OF DEFENCE	3 rd Defendant
CHIEF OF THE SOUTH AFRICAN NAVY	4 th Defendant
MR MARCEL DE WIT	5 th Defendant
MINISTER OF POLICE	6 th Defendant

JUDGMENT BY **MOLITSOANE, J**

HEARD ON: **25 AUGUST 2022**

DELIVERED ON: The judgment was handed down electronically by circulation to the parties' legal representatives by email and released to SAFLII. The date and time for hand down is deemed to be 29 August 2022 at 11:00.

- [1] The applicants seek various orders on various causes of actions which are not clear from the pleadings. The relief is sought against various respondents which includes the President, the Speaker of Parliament and the Chief Justice. The court file also reveals that in these motion proceedings, the applicants also caused subpoenas to be issued against the President.
- [2] It is not clear from the record how service of this application was effected. The Applicants gave the email numbers of the respondents and it appears that service was in all probability effected by email. No affidavit confirming the service of the

application and the subpoenas was filed. There are no returns of services and I take it that the sheriff of this Court did not serve both the application and the subpoenas. That notwithstanding, only the Second Respondent opposes this application.

- [3] Proper reading of the application reveals that the purpose of this application is to either appeal or rescind in terms of Uniform Rule 42 the order granted by the Western Cape Division of the High Court under case number 15141/ 2018. In that case the applicant was declared a vexatious litigant in terms of section 2(1)(b) and (c) of the Vexatious Proceedings Act 3 of 1956(the Act).
- [4] In my view failure to comply with the order of the Western Cape is dispositive of this application. The court in that case ordered thus:
1. *"In terms of section 2(1)(b) & (c) of the Vexatious Proceedings Act 3 of 1956 (the Act), and for an indefinite period, no legal proceedings shall be instituted by the first respondent against any person in any court or any inferior court without the leave of this court, or any Judge thereof or that inferior court, as the case may be('leave')."*
 2. *Such leave shall not be granted unless the Court or Judge of the inferior court, as the case may be, is satisfied that the proceedings are not an abuse of the process of Court and that there is prima facie ground for the proceedings and the First Respondent has provided security for the Applicant's costs.*
 3. *Such leave shall not be granted unless the Court or Judge of the inferior court, as the case may be, is satisfied that First Respondent has satisfied the judgment cost under case numbers 11025/2018, 12095/ 18 and 13505/18.*
 4. ...

- [5] The order above requires pertinent jurisdictional facts to be present before the First Applicant can institute proceedings against any one or entity. It is unnecessary to repeat what was required of the Applicant to do before instituting these proceedings. The First Applicant has not complied with a single requirement of the said order. There is no evidence before me that the First Applicant has sought and was granted leave by that court to institute these proceedings. During submissions before me, upon being probed about whether there was compliance with the order of the Western Cape, the applicant simply informed me that he would not comply with an unlawful order. Unfortunately for the First Applicant the order has not been set aside. There is no evidence that it was appealed against. In submissions it appears contended that he filed an appeal to the Supreme Court of Appeal. There is no evidence before me that he applied for leave and was granted same to appeal the judgment before filing with the SCA. Whether the First Applicant agrees or disagrees with the order, it remains valid and ought to be complied with unless it has been set aside. Failure to comply with the order is fatal to this application.
- [6] Section 4 of the Act criminalises the act of anyone who has been declared a vexatious litigant and institutes proceedings without leave of the court. A person who contravenes this section may be convicted of contempt of court and may be sentence to both a fine and imprisonment not exceeding six months. It is important that the applicant be made aware of this provisions lest he persists with applications of this nature notwithstanding the order in the Western Cape.
- [7] Over and above the failure to obtain permission to institute these proceedings, this court lacks jurisdiction to adjudicate an appeal or

rescission of a judgment which emanate from the order handed down in the Western Cape. Division of the High Court. It is a court of equal standing with this Court. The First Applicant does not enjoy automatic right to appeal the order granted against him. Even if this application was brought in terms of Uniform Rule 42 as indicated in the papers before me, this court would still lack jurisdiction. I have read the papers and the heading indicates that this application was issued as an Appeal number 3373/2022 in this court. The pleadings on the other hand suggest that it is the rescission brought in terms of Uniform Rule 42 as I indicated above. In submissions before me the First Applicant contended that it was an interdict brought on an ex parte basis. No case was made to bring this application on an ex parte basis. Any way one looks at it, will not clothe this court with jurisdiction.

[8] Section 34 of the Constitution provides as follows:

“Everyone has the right to have any dispute that can be resolved by the application of law decided in a fair public hearing before a court, or where appropriate another independent and impartial tribunal or forum.”

[9] While section 34 guarantees the right of the applicants’ access to courts, it has to be borne in mind that, on the other hand, section 173 of the Constitution also provides that this court has the inherent power to protect and regulate its process. The court in the Western Cape was alive to the rights of the First Applicant to have access to the courts. The court did not close the door for him to have access to the courts but was clear in its intention to curb the abuse of the court processes. It is apposite to refer to *Beinash v Wixley*¹ where the court said the following:

¹ 1997(3) SA 721 (SCA) at 773 D.

“There can be no doubt that every court is entitled to protect itself and others against an abuse of its process.

[10] The way the application(s) has(have) been drawn clearly shows wanton disregard of the processes of the court and appears to be an abuse of the processes of the court. The First Applicant seeks various orders, eighteen in number. The orders sought bear no sense and are not supported by any shred of evidence. Upon reading the founding affidavit one is left wondering what the case is all about. The voluminous affidavits do not speak to the relief sought. It is this kind of the application the court in the Western Cape intended to curb. Clearly The First Applicant has no regard to the court processes. He has not sought permission of the court to institute these proceedings. He has not satisfied this court that he has paid the cost orders in three case numbers as ordered. He has not provided security for costs in these proceedings as ordered. The bottom line is that the First Applicant has no locus standi to bring this application.

[11] The remaining applicants are in the same boat with the First Applicant. They were not parties in the Western Cape. They were not properly joined in these proceedings. Their applications also have no merits whatsoever and cannot succeed.

[12] It is unfortunate that the parties would choose to haul the parties to court without even knowing what their causes of action is. During submissions it became clear that what the Second Respondent actually want was for the President to appear before court to enable him (the Second Applicant) to cross examine him about alleged utterances attributed to the President regarding farm killings. It seems that he only wanted to show that the alleged utterances were

not true. Once that interrogation has taken place, there is indication of what he hopes to achieve with it or what its intended goal is. This cannot be allowed. The Third Applicant only wanted the Court to allow the First Applicant access to his children. All these necessitated the opposition of the proceedings. I can find no reason not order punitive costs against all three Applicants. I order as follows

ORDER

1. The applications are dismissed;
2. The applicants are ordered, jointly and severally, the one to pay and the others to be absolved, to pay the costs of the second responded.



P.E. MOLITSOANE, J

On Behalf of the Applicants:

All 3 in person

Instructed by:

On Behalf of the Second Respondent:

Adv. Ngubeni

Instructed by:

The State Attorney
Bloemfontein