



Reportable:	YES / NO
Circulate to Judges:	YES / NO
Circulate to Regional Magistrates:	YES / NO
Circulate to Magistrates:	YES / NO

**IN THE HIGH COURT OF SOUTH AFRICA
(NORTHERN CAPE DIVISION, KIMBERLEY)**

Case No: 1926/2020
Argued: 07 May 2021
Date delivered: 02 July 2021

In the matter between:

**VAALHARTS WATER USERS ASSOCIATION t/a
VAALHARTS WATER**

APPLICANT

and

MOSIMANEGAPE GODFREY WILLIAMS

RESPONDENT

CORAM STANTON AJ

JUDGMENT

STANTON, AJ

INTRODUCTION:-

- [1] The applicant filed an urgent application and a rule *nisi* was granted on 30 October 2020, with a return day of 04 December 2020, in terms of which the following interim orders were granted:-

- 1.1 The respondent, and any person acting through him, is interdicted and prohibited from entering and/or taking occupation of and/or committing an offence in terms of Section 1 of the Trespass Act, Act 6 of 1959 in respect of the property known as 07 Henry Ferreira Street, Jan Kempdorp;
- 1.2 The respondent is interdicted and prohibited from entering the Applicant's offices situated at 882 Van Riebeeck Avenue, Jan Kempdorp;
- 1.3 The respondent is interdicted and prohibited from threatening, assaulting, intimidating and/or contacting, either personally or telephonically, the following employees and/or tenants of the applicant:-
 - 1.3.1 Mr Daniël Jacobus van Eeden;
 - 1.3.2 Mr Hugo van Wyk;
 - 1.3.3 Mr David Goitsimodimo Coetzee; and
 - 1.3.4 Mr Andries Johannes Jansen;
- 1.4 The respondent is interdicted and prohibited from entering the following properties under the power and control of the applicant:-
 - 1.4.1 The residence of Mr Andries Johannes Jansen situated at 07 Henry Ferreira Street, Jan Kempdorp;
 - 1.4.2 The residence of Mr Daniël Jacobus van Eeden situated at 14 Henry Ferreira Street, Jan Kempdorp; and
 - 1.4.3 The residence of Mr David Goitsimodimo Coetzee situated at 05 Henry Ferreira Street, Jan Kempdorp; and

("the properties")

1.5 The South African Police Service was directed and authorised to take all reasonable and necessary steps to give effect to the order.

[2] The respondent, acting in person throughout, opposed the application and filed documents titled "Notice of Dispute" and "Founding Dispute Affidavit." The respondent also personally drafted his heads of argument and appeared in person when the application was argued before me.

[3] On scrutiny, the respondent's defences can be distilled as follows:-

3.1 This application was brought, despite a pending application between the applicant and other respondents, including himself, issued under case number 84/2020 in the Jan Kempdorp Magistrates Court ("the 84/2020 application");

3.2 This application is an interference with the the 84/2020 application, contrary to Section 165(3) of the Constitution of the Republic of South Africa, Act 108 of 1996 ("the Constitution");

3.3 The application is racially motivated;

3.4 The applicant failed to prove that the addresses in respect of which the relief are sought are in existence;

3.5 The respondent was merely acting as a representative of his community and thus he cannot be interdicted in his personal capacity;

3.6 The applicant failed to prove that incidents occurred, but is acting on fear for a possible future incident; and

3.7 Sections 1(1) and 1(2) of the Intimidation Act, Act 72 of 1982 were declared unconstitutional.

APPLICABLE LAW:-

[4] Section 1 of the Trespass Act, Act 6 of 1959 provides that:-

"Prohibition of entry or presence upon land and entry of or presence in buildings in certain circumstances.—

(1) Any person who without the permission—

(a) of the lawful occupier of any land or any building or part of a building; or

(b) of the owner or person in charge of any land or any building or part of a building that is not lawfully occupied by any person,

enters or is upon such land or enters or is in such building or part of a building, shall be guilty of an offence unless he has lawful reason to enter or be upon such land or enter or be in such building or part of a building."

[5] It is trite that an applicant has to meet the following requirements to obtain a final interdict:-

5.1 A clear right;

5.2 An injury actually committed or reasonably apprehended; and

5.3 The absence of any other satisfactory remedy.

AD CLEAR RIGHT:-

[6] According to the applicant, the respondent is not entitled, in terms of Section 1 of the Trespass Act, to enter and invade or to take unlawful occupation of the properties under its control, and more specifically 07 Henry Ferreira Street, Jan Kempdorp. In addition, the respondent is not entitled to enter the applicant's offices

situated at 882 Van Riebeeck Avenue, Jan Kempdorp, or to intimidate and threaten the employees of the applicant at their office or their residential dwellings. The applicant submits that it has a duty to safeguard the interests of its employees and their families, residing in houses under the authority of the applicant, and to protect them, their residences as well as the applicant's offices from unlawful threats and intimidation by the respondent.

- [7] The respondent, however, argues that he should be entitled to enter the applicant's office for purposes of investigating employment and business opportunities.
- [8] It is, however, undisputed that the respondent is not an employee, customer or tenant of the applicant. The applicant accordingly contends that the respondent has no right, consent or reason to enter any of the properties or the applicant's office.

AD INJURY ACTUALLY COMMITTED OR REASONABLY APPREHENDED:-

- [9] According to the applicant the respondent has threatened and intimidated its employees, has exhibited extremely aggressive behaviour and has come close to getting into physical altercations with the applicant's employees for quite some time, culminating in the events in the office of Bezuidenhout on 26 September 2020, as well as the events at 07 Henry Ferreira Street on 29 October 2020. The respondent does not deny the occurrence of these incidents, but merely states that as no complaint was filed at the South African Police Services, the applicant has failed to prove these incidents.
- [10] The respondent argues that no injury was actually committed and that the applicant should only be entitled to an interdict when such injury occurs.
- [11] Injury, in the context of a final interdict is defined by Harms¹ as follows:-

¹ Harms: Civil Procedure in the Superior Courts at A5.4.

"The term 'injury' should be understood to mean an infringement of the right, which has been established, and resultant prejudice. Prejudice is not synonymous with damages and it is sufficient to establish potential prejudice."

- [12] The Court in the matter of ***Free State Gold Areas Ltd v Merriespruit (OFS) Gold Mining Co Ltd*** clarified as follows:-²

"The applicant for an interdict is not required to establish that, on a balance of probabilities flowing from the undisputed facts, that injury will follow: he is only to show that it is reasonable to apprehend that injury will result."

THE ABSENCE OF ANY OTHER SATISFACTORY REMEDY:-

- [13] The applicant submits that it has no satisfactory alternative remedies at its disposal to stop the unlawful conduct of the respondent and that criminal proceedings would also not constitute an effective alternative remedy.

- [14] In order to constitute an alternative remedy, it must:-³

14.1 be adequate in the circumstances;

14.2 be ordinary and reasonable;

14.3 be a legal remedy; and

14.4 grant similar protection.

- [15] The Supreme Court of Appeal, in the matter of ***Hotz and Others v University of Cape Town***⁴, stated the following in respect of alternative remedies in applications for interdicts:-

² 1961 (2) SA 505 (W) at 518A.

³ Harms: Civil Procedure in the Superior Courts at A5.5.

⁴ [2016] 4 All SA 723 (SCA) at paragraph [36].

*"Firstly, the purpose of an interdict is to put an end to conduct in breach of the applicant's rights. The applicant invokes the aid of the court to order the respondent to desist from such conduct and, if the respondent does not comply, to enforce its order by way of the sanctions for contempt of court. Secondly, the existence of another remedy will only prejudice the grant of an interdict where the proposed alternative will afford the injured party a remedy that gives it similar protection to an interdict against the injury that is occurring or is apprehended. That is why, in many cases, a court will weigh up whether an award of damages will be adequate to compensate the injured party for any harm they may suffer. There may also be instances where, in the case of a statutory breach, a criminal prosecution, in appropriate circumstances, will provide an adequate remedy, but there are likely to be few instances where that will be the case. Thirdly, the alternative remedy must be a legal remedy, that is, a remedy that a court may grant and, if need be, enforce, either by the process of execution or by way of proceedings for contempt of court. The fact that one of the parties, or even the judge, may think that the problem would be better resolved, or can ultimately only be resolved, by extra-curial means, is not a justification for refusing to grant an interdict."*⁹

THE RESPONDENT'S DEFENCE:-

- [16] According to the respondent, this application is contrary to the provisions of section 165 of the Constitution that provides as follows:-

"165. Judicial authority –

- (1) The judicial authority of the Republic is vested in the courts.*
- (2) The courts are independent and subject only to the Constitution and the law, which they must apply impartially and without fear, favour or prejudice.*
- (3) No person or organ of state may interfere with the functioning of the courts."*

- [17] Mr van Tonder argued that the respondent's submission is without merit as the applicant is entitled to approach this Court to safeguard the properties under its control, as well as the safety of its employees and to protect its employees from threatening and intimidating conduct, which could probably lead to violence if left to continue unabated. The respondent did not proffer any contrary argument to this submission. I accordingly find that this defence is unmeritorious.

- [18] The respondent raises *lis pendens* as a defence to the application.

[19] The party wishing to raise a *lis pendens* bears the onus of alleging and proving the following:-⁵

19.1 pending litigation between the same parties or their privies;

19.2 based on the same cause of action (the requirement of the same cause of action is satisfied if the other proceedings involve determination of a question that is necessary for the determination of the present case and substantially determinative of its outcome); and

19.3 in respect of the same subject matter. (This does not mean that the form of relief claimed must be identical).

[20] The matter in the 84/2020 application relates to a different property, namely House B135 (corner of Soetdoring & Maroela Streets), Jan Kempdorp, which property was unlawfully occupied by the respondents in that application (of which the respondent in this matter is but one of the respondents). This application relates to residential properties in Henry Ferreira Street, Jan Kempdorp, occupied by employees of the Applicant, as well as the safety and protection of the Applicant's employees and offices.

[21] This application therefore is distinct from the 84/2020 application and the respondent thus failed to discharge the onus of a *lis pendens*.

[22] According to the respondent, the application constitutes an infringement of his rights in terms of Section 22 of the Constitution as he was merely acting as a representative of his community and cannot be interdicted in his personal capacity. He also argues that the meetings with Mr van Eeden and Mr Bezuidenhout were conducted with them in their capacities as CEO of Vaalharts Water and CEO of Department Water and Sanitation respectively and that he cannot be interdicted from

⁵ Precedents of Pleadings, Harms, Lexisnexis, Ninth Edition [page 251].

meeting the representatives of Vaalharts Water and the Department of Water and Sanitation.

- [23] Section 22 of the Constitution states that every citizen has the right to choose their trade, occupation or profession freely, does not support this argument of the respondent. I accordingly find no merit in this contention.
- [24] According to the respondent he does not know where the properties are situated or that the properties in fact exist.
- [25] I find this argument untenable on the respondent's own version as he *inter alia* states the following:-

"On the 29th October 2020 I received a call from Mr Ntimang who reside at 07 Henry Ferreira Street, Galdenskat Lekwa-teemaneng in the North West Province informing me of the incident at his resident. Then after I was called by the SAPS to ask on my where about. I told them I was in Christiaan but I will be back in an hour.

On my arrival in Galdenskat I informed the Police of my return, they asked me to meet them at Mr Ntimang's house where confusion of addresses arised.

I arrived at 7 Henry Ferreira Sgreet in Galdenskat..."

- [26] Section 1 of the Intimidation Act, Act 72 of 1982 criminalise and provides sanctions of a fine not exceeding R40 000 or imprisonment for a period not exceeding ten years or to both such fine and such imprisonment in respect of certain specific unlawful conduct. The respondent's reliance on this section is in my view misplaced and unsustainable.

EVALUATION OF THE EVIDENCE:-

- [27] It is trite that where in proceedings on notice of motion disputes of fact have arisen on the affidavit, a final order, whether it be an interdict or some other form of relief, may be granted if those facts averred in the applicant's affidavits, which have been

admitted by the respondent, together with the facts alleged by the respondent, justify such an order.

- [28] The following test, as formulated in the case of ***Room Hire Co. (Pty.) Ltd v Jeppe Mansions (Pty) Ltd***⁶ by MURRAY, then AJP, is directly apposite to this application:-

"A bare denial of applicant's material averments cannot be regarded as sufficient to defeat applicant's right to secure relief by motion proceedings in appropriate cases. Enough must be stated by respondent to enable the Court to conduct a preliminary examination... and to ascertain whether the denials are not fictitious intended merely to delay the hearing."

"The respondent's affidavits must at least disclose that there are material issues in which there is a bona fide dispute of fact capable of being decided only after viva voce evidence has been heard."

- [29] I am also mindful of the judgment in the matter of ***Soffiantini v Mould***⁷ where Price JP stated:-

"If by a mere denial in general terms a respondent can defeat or delay an applicant who comes to Court on motion, then motion proceedings are worthless, for a respondent can always defeat or delay a petitioner by such a device."

It is necessary to make a robust, common sense approach to a dispute on motion as otherwise the effective functioning of the Court can be hamstrung and circumvented by the most simple and blatant stratagem. The Court must not hesitate to decide an issue of fact on affidavit merely because it may be difficult to do so. Justice can be defeated or seriously impeded and delayed by an over-fastidious approach to a dispute raised in affidavits."

CONCLUSION:-

- [30] In my view, the respondent fails to pertinently reply to any of the applicant's allegations and merely made various *"bald and hollow denials of factual matter"* without fully addressing the facts that he allegedly disputes. Applying the applicable principles, the respondent's version stands to be rejected.

⁶ 1949 (3) S.A. 1155 (T) at page 1165.

⁷ 1956 (4) SA 150 (E) at 154 G-H.

[31] The applicant makes out a case for a final interdict and complies with the required criteria in respect of a clear right, an injury actually committed or reasonably apprehended, and the absence of similar protection by any other ordinary remedy.

COSTS:-

[32] Mr van Tonder submitted that costs should follow the result, and in view of the respondent's conduct, that he should be ordered to pay the costs on an attorney-and-client scale *alternatively* on such as scale as this Court deems appropriate.

[33] The respondent argued that he has no gainful employment and is dependent on a social grant to financially maintain himself. He accordingly requested that no cost order should be granted in his favour.

[34] In view of the respondent's persistent opposition to this application, I am not persuaded that the costs should not follow the event.

WHEREFORE THE FOLLOWING ORDERS ARE MADE:-

1. The rule *nisi* is confirmed; and
2. The respondent is ordered to pay the applicant's costs on a party and party scale.



**STANTON, A
ACTING JUDGE,
HIGH COURT, KIMBERLEY**

On behalf of the applicant: ADV. A.G. VAN TONDER
(On instruction of Haarhoffs Incorporated)

On behalf of the respondent: MR MG WILLIAMS IN PERSON