



IN THE HIGH COURT OF SOUTH AFRICA,

GAUTNEG DIVISION, PRETORIA

CASE NUMBER: 89563 / 19

(1)	REPORTABLE: YES / NO
(2)	OF INTEREST TO OTHER JUDGES: YES/NO
(3)	REVISED.
<u>29 / 01 / 2020</u>	
DATE	SIGNATURE

In the matter between:

JACOBUS JOHANNES KLEINHANS.

APPLICANT

and

MINISTER OF POLICE

1ST RESPONDENT

NATIONAL COMMISSIONER OF POLICE

2ND RESPONDENT

WARRANT OFFICER LEMMER

3RD RESPONDENT

CONSTABLE VAN UYSEN

4TH RESPONDENT

CAPTAIN DE JAGER

5TH RESPONDENT

SAMANTHA WRIGHT

6TH RESPONDENT

JUDGMENT

MAVUNDLA J;

- [1] The applicants approached this Court seeking an order in terms of rule 6(12) for the matter to be heard on urgent basis and that:
- 1.1 That the first to fifth respondents be ordered to attach the applicant's moveable assets wherever same might be found;
 - 1.2 that the third to fifth respondents be ordered to institute prosecution against any individual who might be found in unlawful possession of the applicant's movable assets;
 - 1.3 an order in terms of which the respondents are ordered to pay the applicant's costs, one paying the other one to be absolved, only if the application is opposed;
 - 1.4 further and or alternative relief.
- [2] The applicant averred, inter alia, that:
- 2.1 the sixth applicant, unlawfully and intentionally took possession of his movable assets and sold same to third parties without his knowledge and or consent. During February 2019 he opened a criminal charge of theft against the sixth respondent at Wonderboompoort Police Station under CAS 116/2/2019 for certain movable assets and at that stage Warrant Officer Lemmer, the third respondent investigated the matter and initially it was indicated that no prosecution would be instituted as the matter was perceived to be a civil matter;
 - 2.2 during the same time and sometime after the sixth respondent also opened a number of criminal charges against the applicant which charges were all *nolli prosequi*-ed;
 - 2.3 the applicant insisted that the matter be properly investigated and that the sixth respondent should be prosecuted for theft of the applicant's assets. The matter was submitted to the senior prosecutor, Mr Maphopha at Pretoria North Magistrate's court in order for him to decide to prosecute the sixth respondent and after undue delay his attorney eventually secured a meeting with the senior prosecutor;

- 2.4 on 28 February 2019 the applicant and his attorney approached Mr Maphopha in his office in order to discuss the matter with him and to enquire whether the sixth respondent would be prosecuted for theft of the applicant's movable assets;
- 2.5 during their visit to Mr Maphopha's office, he indicated that he would only speak to the applicant's attorney of record and that the applicant should wait in the hallway despite the fact that the applicant is the complainant. He was later informed that Mr Maphopha decided not to prosecute the sixth respondent and the matter was referred to the Control Prosecutor, Mr Maphoso;
- 2.6 on 27 March 2019 the applicant's attorney of record met with Mr Maphoso, the control prosecutor at Pretoria North Magistrate's court who indicated he would not make a decision on the matter and that the matter would be referred to the Director of Public Prosecution for a decision;
- 2.7 after waiting for a decision from 27 March 2019 until 13 September 2019, a decision was eventually taken by Adv. Mohammed of the Director of Public Prosecution, that the sixth respondent should be prosecuted;
- 2.8 the sixth respondent has appeared before court on the theft charges and the trial will commence on 10 December 2019. The sixth respondent unlawfully and intentionally deprived the applicant from movable assets in excess of R800 000. 00 (eight hundred rand) and currently is facing theft charges for the theft of the applicant's movable assets to the value of R120 000. 000 (one hundred and twenty thousand rand);
- 2.9 despite the investigating officer warning the sixth respondent from selling off any further of the applicant's movable assets, she continued to do so and the applicant is in the process of filing further charges against the sixth respondent in respect of the balance of the applicant's movable assets;
- 2.10 immediacy upon filing further theft charges against the sixth respondent at Wonderboompoort SAPS the investigating officer W/O Lemmer (the third respondent) he knew exactly who bought the applicant's movable assets and where they were as the sixth respondent informed him. The applicant also informed him of the identities of the third parties to whom the assets were sold to, but the W/O failed to retrieve these movable assets, and these still remain with the third parties;
- 2.11 the applicant also met with Captain de Jager and insisted that his movable assets should be attached, but the captain responded that it was not possible and not the responsibility of the SAPS to do so and that no attachment would be done as they did not want to risk being sued. De Jager further informed the applicant that it is the court which must authorise them to attach the alleged stolen goods;

- 2.12 the applicant further contended that the police were negligent in their duty by not attaching the movable assets of the applicant.;
- 2.13 The Director of Public Prosecution through Adv. Mohammed also declined to instruct the SAPS to attach the assets, alleging that they do not have authority to instruct the polic. to do so;
- 2.14 the applicant contended that the matter is urgent because he is involved in a number of cases against the sixth respondent and recently the sixth respondent made attempts at his life on two occasions when his caravan home was petrol bombed. During all the court appearances the sixth respondent was accompanied by Hell's Angels and Mac's Motorcycle Organization and the applicant is intimidated as a result;
- 2.15 the applicant has been alienated from his daughter, his movable assets and business by the sixth respondent and all his efforts to protect his rights to a large extent have been unsuccessful which is largely frustrating as a result of the sixth respondent's vexatious and frivolous conduct over the past twelve months;
- 2.16 the individuals who bought his movable asserts from the sixth respondent are direct family members of the sixth respondent; these are the sixth respondent's brother, brother-in-law, her sister who all knew when they bought the goods that these belonged to the applicant and that the sixth respondent never had the means to acquire the assets by herself;
- 2.17 the sixth respondent never had ownership of the relevant movable goods, therefore had no authority to transfer to any third party and the individuals who bought the goods are just as guilty as the sixth respondent;
- 2.18 the SAPS in terms of the Criminal Procedure Act have always had a duty to attach the applicant's movable goods, but despite the fact that the applicant provided them with concrete proof that he was the owner of and had bought such goods, have failed in their duty to attach the said goods;
- 2.19 All efforts through the SAPS, the Director of Public Prosecution's office per Adv. Mohammed, the magistrate's court in Pretoria North to recover his goods, proved fruitless, thus leaving him with no option but to approach this court;
- 2.20 the matter is urgent because the sixth respondent who is his daughter continues tirelessly to alienate the movable assets of the applicant, and all efforts to enforce his rights have proved fruitless;
- 2.21 he has no other alternative but to turn to this court to enforce his rights;
- 2.22 he did not waste time in turning to this court, but did so as soon as it became apparent that the SAPS and the Director of Public Prosecutions and the Pretoria North magistrate court were unwilling to assist him.

- [3] This application, in my view, stands to be dismissed for the following reasons:
- 3.1 the applicant has already laid criminal charges against the sixth respondent, who she alleges to have taken her goods without her consent or authority. The criminal case is pending in the Pretoria Magistrates court. There is no reason, why this court can ignore this fact and the *audi alteram* principle, and issue an order to the police to attach goods from third parties who have not been joined in the present application.
 - 3.2 in his own version the sixth respondent has sold the relevant goods to third parties. That being the position, the SAPS cannot attach the relevant goods from the third parties, who *bona fide* bought the goods from the sixth respondent. The applicant can institute a claim against those individuals, jointing the sixth respondent to return the said goods or pay her the damages.
 - 3.3 this court does not have powers to instruct the SAPS to attach goods which have been *bona fide* purchased by third parties from the sixth respondent;
 - 3.4 the applicant could have brought on urgent basis a spoliation action application against the sixth respondent as far back as in February 2019, to recover his goods;
 - 3.5 the orders sought by the applicant are final in nature. The applicant does have alternative remedy, a criminal investigation by the SAPS, which is already in progress as the sixth respondent is already facing theft charges over the said goods, and a civil damages *rei-vindicatio* or damages' claim against the sixth respondent and the third parties she sold the goods to; *vide Minister of Health v Drums and Pails Reconditioning CC.*¹
- [4] In respect of urgency, if the court finds that the matter is not urgent, it must strike the matter off the urgent roll. The matter would then have to go to the unopposed motion roll or opposed roll. This will further clog our extremely busy court roll, wasting the court's precious time by unmerited claims. In order to avert this, in the exercise of my discretion, I assume without deciding the issue, that the matter is urgent and proceed to dismiss it on the merits as indicated herein above.
- [5] In the result the application is dismissed and no costs order is made.

¹ *Minister of Health v Drums and Pails Reconditioning CC* 1997 (3) SA 867 at 872C

7



N.M. MAVUNDLA J.

DATE OF JUDGMENT : 29 / 01 / 2020

APPLICANT'S ADV. : ATT. R. VAN RENSBURG

INSTRUCTED BY : KMG & ASSOCIATES INCORPORATED

RESPONDENTS ADV : ADV.

INSTRUCTED BY : STATE ATTORNEY PRETORIA