

IN THE HIGH COURT OF SOUTH AFRICA
KWAZULU-NATAL LOCAL DIVISION, DURBAN

Case No: 12369/2018

In the matter between:

Saumya Tiwari Gautam

Applicant

and

Mrs India South Africa CC

First Respondent

Annulutchmee Thaver

Second Respondent

Deon Ganas

Third Respondent

Judgment

Lopes J:

[1] During the early part of 2018, the applicant, Mrs Saumya Tiwari Gautam, became aware of an advertisement for a beauty pageant described as 'Mrs India South Africa', the object of which was to choose a beauty queen as Mrs India South Africa 2018. Mrs Gautam maintains that the advertisement claimed that the sole aim and objective of the pageant was to inspire, motivate and uplift women in South Africa - this appears in a document entitled 'Introduction' in the court papers. This appealed to Mrs Gautam, as did the prizes which were advertised and described as 'Amazing prizes' up to the value of R500 000 and a brand new VW Jetta 7....'

[2] On the 25th of August 2018 Mrs Gautam won the beauty pageant and was crowned as Mrs India South Africa 2018. She then started working, promoting the brand and complying with her duties as Mrs India South Africa.

[3] As time passed, Mrs Gautam felt that she was getting no support from the respondents, who were the close corporation and persons involved in running the pageant. Her demands for her prizes largely fell on deaf ears, and she received some vouchers valued at no more than R5 000. With regard to the motor vehicle, she was informed by the third respondent that it was a motor vehicle on loan for a period of one year, and that Mrs Gautam would be responsible for insuring the vehicle. Viewing all of this as being not what she was promised, Mrs Gautam then instructed her attorneys to address a letter of demand to the respondents on the 14th of September, 2018. Her letter of demand having elicited no positive response, she caused summons to be issued against the respondents on the 5th of October 2018. Various press reports appeared, recording the complaints of Mrs Gautam. The origin of these reports is the subject of a dispute between the parties.

[4] As a result of the dispute, and the publication of it, the respondents regarded the conduct of Mrs Gautam as being in breach of their contract with her, and by way of what is described as a 'LETTER OF DISQUALIFICATION AND DETHRONEMENT' dated the 26th of October 2018, Mrs Gautam was stripped of her title. The respondents demanded that she return to them all her prizes, sponsorships, packages, vouchers, her title sash and crown. It also appears from the papers that the first princess Daphnie Singh was appointed Mrs India South Africa 2018 in Mrs Gautam's stead.

[5] Mrs Gautam then sought interdictory relief on an urgent basis declaring her to be Mrs India South Africa 2018, alternatively reviewing and setting aside the decision of the first and second respondents to disqualify her, and calling upon the respondents to deliver the record of the proceedings in terms of which she was disqualified. Mrs Gautam sought further relief interdicting and restraining the respondents from taking any steps to remove her as the current holder of Mrs India South Africa, 2018, and further interdicting them from harassing or threatening or defaming her directly, or indirectly through the means of the press or any social media.

[6] The notice of motion frames the interdictory relief in the form of an interim interdict pending the final determination of the application, and costs calculated on the scale as between attorney and own client, jointly and severally, against the respondents.

[7] The matter first came before this court on the 8th of November 2018 when it was struck off the roll for want of urgency. Subsequently, the Judge President directed the registrar to accord the matter such preference as she was able to do. This resulted in the matter coming before me on the 13th of May 2019. Mrs Gautam now seeks final relief.

[8] Mr *Jorgensen*, who appeared for the respondents raised the point that as Mrs Gautam was stripped of her title on the 26th of October 2018 - and the first princess Mrs Daphnie Singh had been appointed - if this Court granted the interdictory relief sought by Mrs Gautam, it would have the effect of stripping Mrs Singh of her title as Mrs India South Africa, 2018. The problem with this is that she has not been cited as a party to this application. Mr *Jefferys SC*, who appeared for Mrs Gautam, submitted that the present proceedings had nothing to do with Mrs Singh and there was nothing which she could say with regard to the present application. He submitted that in the event that this Court did not agree with that approach, an interim interdict should be granted, and Mrs Singh be given an opportunity to intervene.

[9] In support of his contention that Mrs Singh should not be joined as an interested party, Mr *Jefferys* referred me to the matter of *United Watch & Diamond Co (Pty) Ltd and Others v Disa Hotels Ltd and Another* [1972] 4 All SA 493 (C).

[10] In *United Watch* a group of sub-tenants sought an order setting aside the termination of their leases by a provisional liquidator. This was after the tenant through whom they had acquired their respective sub-lease rights, had been provisionally liquidated. The court held that they had no direct and substantial interest in the application for the provisional or final liquidation of the tenant, and the granting of rights to the liquidator to cancel the sub-tenants' lease agreements. The court held that the applicants were in an analogous position to sub-lessees in an action for ejectment. Thus, although the application itself to set aside the liquidation decision was in a different format, that did not constitute a distinction of any significance. In the circumstances the court declined to set aside those parts of the

provisional liquidation order authorising the liquidator to cancel the applicants' leases. The court also expressed the view that there was no merit in a claim for non-joinder in the original liquidation application.

[11] The present circumstances are somewhat different. In *United Watch* the applicants, as sub-lessees, derived their title from the tenant. Their relationship with the tenant had nothing to do with the tenant's relationship with its landlord and the liquidation proceedings. In the present matter, in the event that I were to grant the relief sought by Mrs Gautam, there would be two persons having the title of Mrs India South Africa, 2018 – the first appointed by the respondents – and the second by way of an order of court. This would clearly be untenable, and Mrs Singh may rightly be heard to complain that she had no part in the order reinstating Mrs Gautam, because she had never been cited as a party.

[12] In this regard it is significant to note that Mrs Gautam herself does not view the loss of the title as being a purely financial matter. There is obviously a considerable element of prestige and publicity involved in having acquired the title and being treated as a celebrity. These are aspects which are very difficult to express in monetary terms. In my view Mrs Singh has a direct and substantial interest in the application before me.

[13] Mr *Jefferys* submitted that in the event I was of the view I have expressed above, that I should grant an interim interdict pending the outcome of the application. I do not believe that it would be correct in the circumstances for me to do so. I appreciate that Mrs Gautam regards the matter as having an element of urgency, because once the remaining four months' of her reign have expired, her reign will be over and there will be no point in restoring the title to her, save for the prizes. The prizes however form the substance of an action instituted actioned by her against the respondents.

[14] In making the order which I set out below, the respondents have incurred wasted costs in having to come to court to argue the point of non-joinder, and they must be compensated for those costs. I am mindful of the continuing urgency of the matter, and allow for abridged dates for the delivery of affidavits.

[15] In all the circumstances I make the following order:

- (a) The application is adjourned *sine die*, and the applicant is given leave to amend her application, to seek to join Mrs Daphnie Singh as a respondent.
- (b) In the application to join Mrs Daphnie Singh, she must be directed to deliver any answering affidavits, or a notice to abide, within 10 days of the date of the service of the papers upon her.
- (c) The applicant is directed to deliver any replying affidavit within five days of the receipt of any affidavits delivered by Mrs Daphnie Singh.
- (d) The applicant is given leave to approach the senior presiding judge once the papers are finalised, to seek an urgent date for hearing as the senior presiding judge may determine.
- (e) The applicant is directed, in the application to join Mrs Daphnie Singh, to annex a copy of this order, and to draw her attention to the provisions regarding the delivery of affidavits, or a notice to abide.
- (f) The applicant is directed to pay the wasted costs of the respondents occasioned by the hearing on the 13th of May, 2019.

Lopes J

Date of hearing: 13th May 2019.

Date of judgment: 21st May 2019.

For the Plaintiff: Mr H P Jefferys SC (instructed by Rajesh Hiralall Attorneys).

For the Defendant: Mr P Jorgensen (instructed by Mervin Dorasamy Inc. Attorneys).