

IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA

Case Number: 1189/97

In the matter between

PAUL NIEUWOUDT

First Applicant

TONA NIEUWOUDT

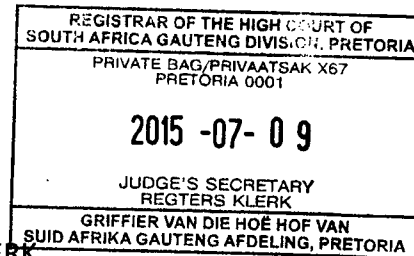
Second Applicant

And

GERBRAND ABRAHAM VAN NIEKERK

First Respondent

and 8 Other Respondents



JUDGMENT

BAM J

1. This matter was enrolled before the urgent court of this Division on 7 July 2014. The heading of the application indicates that the application is brought before the Court of the Commissioner of Patents. Only the applicants were represented in this Court.
2. The application, in its initial form, concerns, *inter alia*, the rescission of orders made by four judges of this division on various dates. During argument, however, Adv Pieters SC, assisted by Adv Wilson, representing the applicants, reduced the relieve sought to, in terms of Rule 42(1), a rescission of an order made by Jansen J in the Court for the Commissioner of Patents, Pretoria, on 2 June 2015, in this matter, concerning the same parties. That order was made in the absence of the applicants. In respect of the other relieve sought by the applicants it was conceded by Mr Pieters that the matter was not urgent.
3. The order made by Jansen J on 2 June 2015, in paragraph 1, involves that the application be struck from the roll with punitive costs. Paragraph 2 of that order reads as follows: "*That the applicants not be permitted to institute any further proceedings against the second and third respondents before paying such costs.*"
4. It appeared that the applicants felt aggrieved about the fact that the order was made in their absence and that the second paragraph, in any event, is unconstitutional.
5. Concerning the contents of the second paragraph it seems that it may, *prima facie*, be arguable whether such order is indeed constitutional. For practical purposes it seems to have the same effect as an order declaring a litigant vexatious. Unfortunately it is not known

what the learned presiding judge took into account in making that order. In my view it is important to have all the facts before Court. It is however clear that the order could only affect litigation in the Court of the Commissioner of Patents.

6. One of the issues in this application was whether the application was properly served on the respondents. In this regard the court was referred to an Email indicating that an application consisting of a notice of motion and supporting documents were E Mailed to the respondent's attorney of record by a certain Annick Hough, whose E mail address indicates that she may be an attorney. This person was however not the applicants' attorney of record. This Email was responded to by the respondent's attorney of record indicating, amongst others, that they were not prepared to accept service by way of Email and that the application, properly paginated, had to be served on their correspondents in Pretoria.
7. In respect of service by Electronic Mail, Mr Pieters pointed out that process is now authorized in terms of the Rules. This is indeed correct.
8. However, there is no further indication on record that the application was in fact served on the respondents' attorneys, whether by Email or in any other way. In terms of the provisions of Rule 42(3) the Court shall not make any order rescinding or varying any order unless satisfied that all parties whose interests may be affected have notice of the order proposed. In view of the situation in respect of service alluded to above, I am not satisfied with the alleged service of the application.
9. In respect of urgency, it was argued by Mr Pieters that the second applicant had made out a case in view thereof that if the order of Jansen J is not set aside, the second applicant's attached vehicle, which she urgently needs for business purposes in terms of a contract with her employer, will be sold in execution, with the effect that her business contract with her employer will be terminated. Unfortunately for the second applicant, it is not adequately, if at all, explained why she could not obtain another vehicle to enable her to continue with her work.
10. In view of the above the applicants failed to substantiate the application for the rescission of Jansen J's order of 2 June 2015
11. The request of Mr Pieters that the outstanding claims be postponed cannot succeed in view thereof that, due to a lack of urgency, it is not properly before this court.
12. The application as a whole is therefore struck off.


A J BAM JUDGE

8 July 2014