

FREE STATE HIGH COURT, BLOEMFONTEIN
REPUBLIC OF SOUTH AFRICA

Case No. : 2013/2013

In the matter between:-

THE SOUTH AFRICAN MUNICIPAL WORKERS
UNION

Applicant

and

SIPHO GROOTBOOM

1st Respondent

GODFREY MOLEHENG

2nd Respondent

SINDELANI THOMAS

3rd Respondent

G D THIBELETSA

4th Respondent

B G SIKOTI

5th Respondent

D Y MDLELENI

6th Respondent

M J MALIEA

7th Respondent

M SWARTS

8th Respondent

M J MASHIBINI

9th Respondent

V E BOCIBA

10th Respondent

S K PHORI

11th Respondent

S S SIBOKA

12th Respondent

T J KHOHO

13th Respondent

M E MASHIBINI

14th Respondent

L T MAKUTSI

15th Respondent

T KGOHLOKOANE

16th Respondent

HEARD ON:

5 SEPTEMBER 2013

JUDGMENT BY:

DE WET, AJ

DELIVERED:

12 SEPTEMBER 2013

- [1] On the 23rd May 2013 applicant applied for an urgent interdict against the respondents pending the final adjudication of the application.
- [2] Fischer AJ found that the application was urgent and a rule *nisi* was issued calling upon the respondents to show cause on 20 June 2013 why the following order should not be made final:
- 2.1 The first, second and third respondent are interdicted and restrained from further, whether directly or indirectly, instructing, coaxing, cajoling or in any other manner persuading any of the other respondents before court or any other person, to assault, threaten, harass, molest or in any way intimate (sic) the applicant's provincial and regional employees;
- 2.2 The fourth to sixteenth respondents are interdicted and restrained from directly or indirectly, assaulting, harassing, threatening, molesting or any other way cause any form of harm to the applicant's provincial or regional employees;
- 2.3 The first to sixteenth respondents are ordered to immediately hand over to the sheriff of this court, the keys

kept by them of the applicant's provincial and regional offices in Bloemfontein, situated at Cricket Street, and to allow access to these offices of the applicant and its employees;

- 2.4 The first to third respondents are interdicted and restrained from further holding any meetings in the name of the applicant, to congregate in any manner or fashion under the name of the applicant and to either individually or collectively, attend to or visit the provincial or regional offices of the applicant;
 - 2.5 The first to sixteenth respondents be ordered to pay the costs of the application jointly and severally, payment by one, the other to be absolved, on the scale as between attorney and own client.
- [3] On the 1st August 2013 the rule *nisi* was extended to 5 September 2013 by Rampai AJP and the respondents were ordered to file their opposing affidavits on or before 16 August 2013 and the applicants to file their replying affidavits on or before 23 August 2013.
- [4] The dispute engendered by the application centres around *inter alia* the allegations that
- 4.1 applicant is a trade union in the local sphere of government representing members employed by the Mangaung

Municipality;

- 4.2 as a result of the restructuring of the Mangaung Municipality, applicant entered into negotiations with regard to the placement of its members in the new municipal structure and apparently the members of applicant became frustrated with the protracted negotiations and the dissatisfied members thereafter signed a petition during March 2013 calling for the removal of applicant's employees, being the fulltime shop stewards.
- [5] It is alleged and denied that as a result of first, second and third respondents' actions described as industrial espionage in the founding papers, applicant decided to suspend them as part-time shop stewards of the applicant and letters of suspension was subsequently served on first, second and third respondents on 17 May 2013.
- [6] The first, second and third respondents then allegedly called a meeting on 21 May 2013 and after the meeting a mob arrived at the regional offices of applicant at City Hall, Bloemfontein and members or employees of applicant identified as Mogorosi, Maphatlalatse and Nkalai were thereafter assaulted and the keys were taken and doors were locked by the mob. The keys have since disappeared.

- [7] The mob thereafter went to the provincial offices of the applicant situated at Cricket Street, Bloemfontein and there again threatened employees of applicant. The offices were also locked and the keys taken.
- [8] The allegation by applicant is that the respondents were members of the mob who perpetrated the aforesaid actions at both applicant's regional offices and at the provincial offices.
- [9] Charges were laid at the South African Police and an ID parade held and it is alleged by applicant that fourth to sixteenth respondents were identified as perpetrators. Strangely enough, first, second and third respondents were apparently not identified as such.
- [10] The first, second and third respondents are believed by applicant on the circumstances to be behind the intimidation, threatening and assaults on applicant's employees and the general disruption of the applicant's activities complained about.
- [11] The respondents deny the allegations that they assaulted or harmed any of the applicant's officials and that they disrupted any of applicant's activities, as alleged or at all.
- [12] The respondents allege that a certain Mr Lebatsa and fourteenth respondent led ± 175 employees of the Mangaung Municipality Bloemfontein on 20 May 2013 to applicant's offices

situated at the City Hall, Bloemfontein to enquire about the grievances raised already during March 2013.

- [13] First, second and third respondents were not present. Neither were sixth, seventh, eighth, ninth and thirteenth respondent present.
- [14] On the respondents' version respondents four, five, ten, eleven, twelve, fourteen, fifteen and sixteen must have been present at the meeting and during the march on the offices of the applicant.
- [15] According to the respondents on their arrival at the City Hall, applicant's employees left the offices without addressing the mob and as they left the offices unattended Mr Lebatsa and fourteenth respondent locked the offices (what happened to the keys is still a mystery) Any threat or confrontations are denied.
- [16] The mob then went to the applicant's Cricket Street offices, but the provincial secretary, Mr Magagula, was not present and Mr Lebatsa then discussed the matter with a lady, Me Selilo, who then gave him Mr Magagula's cellphone number.
- [17] The angry and frustrated employees then insisted that Me Selilo close the Cricket Street offices of the applicant and the offices were then locked and Me Selilo took the keys with her.

- [18] The respondents deny that anybody was assaulted by any of the employees and definitely not by the respondents present. They furthermore deny that anyone was threatened or harassed at any stage and the respondents present did not interfere with any of applicant's functions.
- [19] Respondents allege that on 21 May 2013 ± 500 employees of the municipality went to the applicant's offices at the City Hall. They found the offices locked and they then went to the Cricket Street premises of the applicant where they found the gates to the offices locked and closed.
- [20] Nobody was assaulted or threatened or interfered with on 21 May 2013 neither by the employees nor by any of the respondents present. First, second and third respondents never arranged any meeting or march and did not intice anybody to threaten, harass or physically assault any of the applicant's employees.
- [21] From the replying affidavit – annexure "R2" - it is clear that an employee of the applicant sustained injuries during the abovementioned mob action. Second, eighth, ninth and thirteenth respondents are identified in the replying affidavit as being present at the meeting on 20 May 2013 and during the mob action thereafter.
- [22] The ninth respondent is identified as having grabbed Mr Nkolai

by the scruff of the neck. The allegation is in fact new evidence appearing for the first time in the replying affidavit and the respondents had clearly no opportunity to deny same.

[23] To obtain a final interdict by way of application, an applicant must establish

- (i) a clear right,
- (ii) an injury actually committed or reasonably apprehended or an actual or threatened invasion of that right; and
- (iii) the absence of a similar protection by any other ordinary or suitable remedy in law.

See: **Minister of Law and Order, Bophuthatswana, and Another v Committee of the Church Summit of Bophuthatswana and Others** 1994 (3) SA 89 (BGD) at 98C.

[24] The second essential for the granting of a final interdict means a breach or infraction of the right which has been shown or demonstrated and the prejudice that has resulted therefrom. The term “injury” is used as a translation of Van der Linden’s “een gepleegde feitlikheid” (a fact committed).

[25] From this second essential it is clear that in order to succeed the applicant must also show who in fact committed the complained of injury. The allegations supplied by the deponents in the founding affidavits are extremely vague.

There is just no evidence on which any of the respondents are properly identified as perpetrators in specific instances.

- [26] I bear in mind that in an application for final relief it is trite that factual disagreements are to be dealt with in accordance with the rule in **Plascon-Evans Paints (Pty) Ltd v Van Riebeeck Paints (Pty) Ltd** 1984 (3) SA 623 (A) and that it should be dealt with mainly on the allegations made by the respondents.

See: **Thint (Pty) Ltd v National Director of Public Prosecutions and Others; Zuma v National Director of Public Prosecutions and Others** 2009 (1) SA 1 (CC)
2009 (1) SA 1 (CC).

- [27] The respondents' version that no violence, assaults, threats with assault, intimidation, etc. occurred on the 20th May 2013 are clearly untenable and farfetched. It is difficult to perceive an angry and frustrated mob going to the applicant's offices to raise their grievances behaving in a calm and orderly manner, as the respondents aver. It is also difficult to perceive that the employees of the applicant in City Hall would have fled the scene without sound reason for doing so.
- [28] Even if I reject the specific version of the respondents regarding what happened at the meetings on 20 May 2013 and even the version of what happened and transpired on 21 May 2013, the applicant still need to prove which of the respondents has

assaulted, intimidated or harassed any of the applicant's officials. The applicant was clearly well aware of the problem that he faced and in his replying affidavit he states:

"I have been advised that if in fact the court finds that the respondents were part of the mob that descended upon the applicant's offices in the Bram Fischer Building as well as Cricket Street they are guilty by means of association. They clearly had a common interest and for purposes of these proceedings, these will more than suffice and entitle the applicant to the relief it finally seeks."

[29] The applicant is clearly relying on a common purpose in proving its case against the respondents and probably so as a result of the fact that there is no direct evidence indicating what each and every one of the individual respondents did or did not do on 20 or 21 May 2013. In order to succeed with the application on the basis that the respondents acted with a common purpose and to prove a common purpose, the applicant had to prove the following:

- (i) that the respondents have been present at the scene where the assault and other conduct complained of was being committed;
- (ii) they must have been aware of the improper conduct;
- (iii) they must have intended to make common cause with those who were actually perpetrating the deeds;
- (iv) they must have manifested their sharing of a common purpose with the perpetrators of the deeds by themselves individually performing some act of association with the

conduct of the others;

(v) they must have the necessary *mens rea*.

See: **S v Mgedezi and Others** 1989 (1) SA 687 (A).

[30] In **S v Khumalo en Andere** 1991 (4) SA 310 (A) 343J it was held

“Wat bewys moet word, is die opset van elke beskuldigde. As gepoog word om daardie opset af te lei van die geestesgesteldheid van ‘n groter groep mense, kan so ‘n afleiding alleen geregverdig word waar die Hof geen redelike twyfel het nie dat al die lede van die groep wel so ‘n eensgesinde opset gehad het en dat die beskuldigde deel van die groep was in die sin dat hy daardie opset gedeel het.”

I may add that in a civil matter the deduction will be made on a balance of probabilities.

[31] As already indicated there is no or very little evidence of any individual respondent (other than respondent 9 in the replying affidavit) committing any act complained about by the applicant.

[32] There are factual disputes relating to the presence of respondents 1, 2, 3, 6, 7, 8, 9 and 13 either at the meeting or at any of the gatherings at applicant's premises on 20th May or 21st May 2013. Of the remaining respondents not one is identified in the founding papers as a perpetrator of any of the acts complained about by the applicant, probably because the

applicant was under the impression and as a result of urgency that it would suffice if he identifies the respondents as members of the mob.

[33] It is also trite that an interim interdict cannot be confirmed in the absence of facts justifying a reasonable apprehension that the harm complained about is likely to be repeated.

[34] The only evidence in this regard is the allegation that fourth to sixteenth respondents had at the identification parade “collectively intimate” that they shall continue in their actions.

[35] Not only is the identification parade in dispute but it is not clear what actions, if any, they referred to and who specifically uttered the threats. There is no indication at all that the actions referred to, if I accept that they were uttered refer to anything unlawful.

[36] I accordingly make the following order:

1. The provisional order granted by Fischer AJ on 23 May 2013 is uplifted.
2. The application is dismissed with costs.

P.J.T. DE WET, AJ

On behalf of applicant:

Adv S. Grobler
Instructed by:
Kramer Weihmann & Joubert
BLOEMFONTEIN

On behalf of respondents:

Adv S.J. Reinders
Instructed by:
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