

IN THE HIGH COURT OF SOUTH AFRICA
[NORTH GAUTENG HIGH COURT, PRETORIA]

CASE NUMBER: 3619/2007

In the matter between :

27/10/2009

MORARE : SHADRACK MODUMO

FIRST APPLICANT

MORARE : ABRAHAM PATELA

SECOND APPLICANT

and

MORARE : OLIVER BAIPONE

RESPONDENT

JUDGMENT

KEMP, AJ :

27 OCTOBER 2009

INTRODUCTION :

- [1] The Applicants seek interdictory relief against the Respondent, in respect of words spoken and actions. Respondent has "counter applied" for interdictory relief albeit without filing a notice of counter-application, but by incorporating prayers for relief in his answering affidavit.

BACKGROUND :

- [2] The dispute in this matter has arisen because, indisputably, the adoption of two stances has occurred in the community : The one stance, as represented by the Applicants; and the other stance, as represented by, *inter alia*, the Respondent.
- [3] It is undisputable that by virtue of the two different stances, neither "group" trusts the other. The decision I have to make is whether on the papers as they are before me I can grant an interdict to the Applicants/or the Respondent.

CONSIDERATION :

- [4] The facts bandied around in the papers reeks of a spat between married partners. It is undeniably so that the First Applicant had threatened to kill the Respondent. The First Applicant states so in his own papers and that would *prima facie* be enough grounds to grant an interdict. However, the explanation given by the First Applicant, the fact that he volunteers this information, the fact that he went to the Police to tell them that he has threatened the Respondent with death and the fact that it happened some time ago gives the appearance of water under the bridge. I believe this is a matter that can be put to bed by the parties themselves and it is

very possible that if either party is interdicted by this Court such an order might feed the flames of antagonism.

[5] I believe that the best order in the circumstances would be to grant an interim interdict against both parties in accordance with the test propounded in **Webster v Mitchell**¹.

[6] I make the following order :

[1] Pending the final outcome of this matter :

[1.1] the Respondent is interdicted and restrained from :

[1.1.1] uttering allegations to the effect that the Applicants sold the Bakgaga Bakopa community's land and/or mineral rights;

[1.1.2] calling for a boycott of the Tafelkop Wholesale Retailers, also known as the RNR shop, in Tafelkop;

¹ 1948 (1) SA 1186 (W) at 1189, as qualified in *Gool v Minister of Justice & Another* 1955 (2) SA 682 (C) 687 *Fin* – 688v(F)

[1.1.3] uttering words to the effect that the Applicants and/or their families should be killed or expelled from the Bakgaga Bakopa community;

[1.1.4] uttering words to the effect that the Applicants are thieves and/or dishonest and/or not law-abiding citizens;

[1.1.5] inciting the Bakgaga Bakopa community to act violently against the Applicants and/or their families; and

[1.1.6] making false allegations against the Applicants.

[1.2] The First Applicant is interdicted and restrained from threatening to kill or otherwise harm the Respondent.

[2] The following aspects are referred to oral evidence for final determination :

[2.1] whether the Respondent has uttered allegations to the effect that the Applicants sold the Bakgaga Bakopa community's land and/or mineral rights and a final interdict ought to be granted against him;

- [2.2] whether the Respondent has called for a boycott of the Tafelkop Wholesale Retailers, also known as the RNR shop, in Tafelkop and a final interdict ought to be granted against him;
- [2.3] whether the Respondent has uttered words to the effect that the Applicants and/or their families should be killed or expelled from the Bakgaga Bakopa community and a final interdict ought to be granted against him;
- [2.4] whether the Respondent has uttered words to the effect that the Applicants are thieves and/or dishonest and/or not law-abiding citizens and a final interdict ought to be granted against him;
- [2.5] whether the Respondent has incited the Bakgaga Bakopa community to act violently against the Applicant and/or their families and a final interdict ought to be granted against him;
- [2.6] whether the Respondent has made false allegations against the Applicants and a final interdict ought to be granted against him; and

[2.7] whether the First Applicant is a real threat to the Respondent and a final interdict ought to be granted against him.

3. In respect of the presentation of such oral evidence, the following applies :

[3.1] unless this Court otherwise orders only those witnesses, who have deposed to affidavits in this application, may give oral evidence in respect of the abovementioned matters; and

[3.2] no other witness may be called except with the leave of this Court or a Judge in Chambers, which leave may be sought only after the opposite party has been given reasonable notice of the date and time when such leave will be sought and such notification is accompanied by a summary of the proposed evidence of the witness in sufficient detail to allow an assessment of the justification of allowing the witness to be called.

- [4] The costs of this application shall be reserved for determination by the Court hearing oral evidence.


KEMP, AJ