

FREE STATE HIGH COURT, BLOEMFONTEIN
REPUBLIC OF SOUTH AFRICA

Case No.: 6066/2008

In the case between:

ISRAEL SABATA PAPANE

Plaintiff

and

GEDIONE VAN TONDER

1st Defendant

HADIFELE MOFOKENG

2nd Defendant

PAUL TATI

3rd Defendant

**SOUTH AFRICAN BROADCASTING
CORPORATION**

4th Defendant

JUDGEMENT:

RAMPAI J

HEARD ON:

22 JANUARY 2009

DELIVERED ON:

9 APRIL 2009

[1] The matter came to this court by way of action proceedings.

The plaintiff sued the four defendants for the payment of R4,5m and ancillary relief he sought as compensation for damages. The cause of action, according to the particulars of claim, was breach of contract of service. The plaintiff initiated the action on the 22nd September 2008.

[2] The action was defended by all the defendants. Apart from the substantive plea on the merits the defendants raised two

special pleas. On the strength of such special pleas the defendant prayed that the plaintiff's action be dismissed with costs.

[3] Besides the special pleas, the defendant also pleaded on the merits. In their main plea, they admitted that the plaintiff was once in the employ of the 4th defendant but denied the allegation that his dismissal constituted breach of the terms of his contract of employment. They averred that the termination of his contract of employment was lawful because he had committed a workplace transaction for which he was charged, disciplined, found guilty and dismissed.

[4] Both of the special pleas of the defendants were filed simultaneously with their substantive plea on the 31 October 2008. Subsequent to this the plaintiff brought two applications against the defendant. One for default judgment and the other for the striking out, in turn the fourth defendant also brought an application to have the plaintiff declared vexatious litigant.

[5] I would like to record the historical background of the matter in this court for the sake of expediency, not that it is really necessary to do so.

5.01 On 22 September 2008 plaintiff's summons was issued.

5.02 On 27 October 2008 defendant's notice of intention to defend was filed.

5.03 On 27 October 2008 plaintiff applied for default judgment - registrar made an order i.t.o. Rule 31(5)(v).

5.04 On 31 October 2008 the plea of the defendant filed.

5.05 On 7th November 2008 plaintiff's notice of motion filed - authority of defendants' attorneys challenged.

5.06 On 12 November 2008 defendants filed notice of motion in term of section 2, Act No. 3 of 1956.

5.07 On 14 November 2008 attorneys for the defendants filed special power of attorney.

5.08 On 18 November 2008 plaintiff filed notice of bar in terms of Rule 26.

5.09 On 18 November 2008 plaintiff filed notice of opposition – Section 2, Act No. 3 of 1956.

5.10 On 18 November 2008 defendants answering affidavit filed in connection with Rule 26.

- 5.11 On 18 December 2008 plaintiff's notice of set-down filed in connection with default judgment - Rule 31(5) (a).
- 5.12 On 31 December 2008 plaintiff's index filed, Rule 58.
- 5.13 On 8th January 2009 plaintiff's default judgment application removed from the roll – Cillié J.
- 5.14 On 9th January 2009 plaintiff's answering affidavit was served.
- 5.15 On 9th January 2009 plaintiff's notice of set-down was filed - default judgement - Rule 31(1) application referred to the opposed motion court – Moloi AJ.
- 5.16 On 16th January 2009 defendants' notice of set-down filed in connection with the vexatious application.
- 5.17 On 15th January 2009 plaintiff's applications postponed – 21 January 2009, Moloi AJ.
- 5.18 On 16th January 2009 defendants filed an index of the record.
- 5.19 On 19th January 2009 plaintiff's written complaint about the indexing received.
- 5.20 On 19th January 2009 plaintiff filed his own index.
- 5.21 On 20th January 2009 defendants' heads of argument filed.

- [6] On Thursday the 22nd January 2009 the matter served before me. The plaintiff had no legal representative. He appeared in person. On behalf of the defendants appeared Mr. Lengane. There were three applications before the court, two by the plaintiffs and one by the fourth defendant. First was the plaintiff's application to strike out the notice of intention to defend as well as the plea and second was the plaintiff's request for default judgment against the defendants. Third was the application of the 4th defendant to have the plaintiff declared a vexatious litigant and other ancillary relief.
- [7] As regards the plaintiff's application for default judgment the sheriff served the summons upon the first defendant on the 8th October 2008. Precisely when it was served on the rest of the defendant does not appear. On the 27 October 2008 after the expiry of the 10 day period of *dies injuciae*, the defendants filed a notice of the intention to defend the action.

[8] On the very same day, in other words 27 October 2008, the plaintiff filed his application for judgment by default. Still on that selfsame day the plaintiff appeared before the assistant registrar, Ms Ria Chetty, where he sought instant justice. It would seem she declined to instantly grant default judgment in favour of the plaintiff. Instead she directed in terms Rules 31(5)(vi) that the application for default be enrolled for hearing in an open court. This was not immediately done by the plaintiff. A few days after the registrar's direction the defendants filed their plea.

[9] On the 18th December 2008 the plaintiff set the application for default judgment down. He did not serve the notice of set-down on the defendants. Subsequently the plaintiff's application for default judgment served before Cillié J on the 8th January 2009. On that day it was removed from the roll. It appears to me that Cillié J required that the defendants should be served and notified of the plaintiff's application for default judgment.

[10] The next day, on the 9 January 2009 the plaintiff served and filed the require notice of set-down for hearing of his

application for default judgment. The matter served before Moloi AJ on the 15 January 2009 in the unopposed motion court. He postponed the plaintiff's application for hearing in the opposed motion court. The defendants were apparently represented and there were clear indications that they were seriously determined to oppose the grant of default judgment against them.

[11] On Thursday, the 22nd January 2009 the plaintiff's application for default judgment was argued before me. The crux of the plaintiff's case was seeing that the defendants had failed to deliver their notice of intention to defend within 10 days after the service of the summons, the plaintiff was entitled to proceed further against them. He contended that their belated notice should simply be ignored.

[12] The plaintiff's contention has no substance. It is apparent that he did not read the whole of the relevant rule. The defendant in every civil action must be allowed at least 10 days after the sheriff has served the summons within which to deliver a notice of intention to defend – Rule 19(1). But

that is not where it all ends. Rule 19(5) takes the matter further. It reads as follows:

“(5) Notwithstanding the provisions of subrules (1) and (2) a notice of intention to defend may be delivered even after expiration of the period specified in the summons or the period specified in subrule (2), before default judgment has been granted: Provided that the plaintiff shall be entitled to costs if the notice of intention to defend was delivered after the plaintiff had lodged the application for judgment by default.”

[13] Now, in the instant case the defendants’ notice of intention and the plaintiff’s application for default judgment were both filed on one and the same day, viz 27 October 2008. The defendants’ notice was apparently served on the plaintiff at 14h26, therefore it must have been filed soon afterwards. It does not appear at what time the plaintiff’s application was filed. But whether the plaintiff’s application was filed before or after the defendant’s notice is of no substantive significance. What is of importance is that even if the defendant’s notice was filed after the plaintiff had already lodged his application for default judgment the defendant’s notice would prevail over the plaintiff’s application. The

plaintiff would merely be entitled to claim the wasted costs from the defendant.

[14] Let me assume for the sake of argument in favour of the plaintiff that the defendants did not file any notice of intention. Even if that was the real scenario I would still not grant default judgment. The situation as on the 27 October 2008 would have been governed by Rule 31(2)(a) since the plaintiff's action was based on an illiquid claim, in other words, damages. If the defendants have not filed notice of intention to defend any non-trial judgment such as default judgment has to be formally enrolled. Even when the defendant has failed to deliver notice of intention and it is not necessary for the notice of setdown to be served, it is still necessary to file such notice of setdown - Rule 31(4).

[15] The practical importance of this rule lies in the obvious fact that the registrar has an important administrative obligation to regulate, not only the functioning of the courts, but that of its supporting structures to ensure operational efficiency. The smooth functioning of the court can be seriously undermined if lawyers or litigants were allowed to knock at

the door of the registrar's office at any time without prior formal notice with instant demands or requests for the grant of default judgment. This is precisely what happened here. No less than five days notice has to be given to the registrar for such purposes.

[16] Where as in this case, the application for default judgment concerns an illiquid claim, the court and not the registrar first has to hear oral evidence in order to decide whether to grant such judgment or not. The procedure followed by the plaintiff was therefore irregular. Be that as it may, I did not find it necessary to afford the plaintiff an opportunity to give any evidence on oath. Doing so would have served no useful purpose in the circumstances.

[17] There are a few other worrying features, about the plaintiff's application for default judgment. For instance the given address of the second, third and 4th defendants were all in Johannesburg. Yet there was no proof of service upon any of them when the plaintiff filed his application for default judgment on the 27 October 2008. Only the third defendant was properly served with the summons on the 8th October

2008. Elsewhere in the fourth defendant's papers an averment was made that the second and the third defendants were no longer in the employ of the fourth defendant. The plaintiff's assertion that the defendant (not defendants) having being duly served with the summons on the 8th October 2008 is only true in respect of the first defendant. Since the plaintiff has no proof of service in respect of the last three defendants he cannot assert, as he does, that the time for the defendants to enter appearance to defend expired on the 21 October 2008. Similarly the plaintiff cannot, for the same reason, assert that the defendants had failed to enter an appearance to defend when there is no proof that they were ever served with the summons in the first place.

- [18] In the summons the plaintiff instructed the sheriff that the first defendant was an employee of the third defendant but in the particulars of claim he described the same person as an employee of the fourth defendant. In the light of all these discrepancies no court would have granted default judgment in favour of the plaintiff. The fact of the matter is that the

defendants filed their notice before default judgment was properly enrolled.

[19] There is yet one more aspect I have to comment on about the plaintiff's particulars of claim. No where in this important founding pleading does the plaintiff say a word about the damages he has suffered. The amount claimed appears for the first time from nowhere in the section of the prayers at the very end of the particulars of claim. It follows from this alone that the plaintiff's summons was fatally defective. Certainly no default judgment could be granted on such defective summons. It was not open for the plaintiff to contend in his argument that such defect was cured by several annexures to his application for default judgment. In my view even if it could be done in that way, there was absolutely nothing in any of those annexures to redeem the plaintiff's application for default judgment. I would therefore dismiss the plaintiff's application for default judgment with costs.

[20] As regards the plaintiff's application to strike out the notice of intention to defend much of my comments in connection with

the default judgment especially those as set out in paragraphs 17 and 19 apply equally well here. In my view it cannot be contended with conviction that the second, third and fourth defendant were out of time when they together with the first defendant filed their joint notice of intention to defend. However, in this regard the thrust of the plaintiff's case is not so much the alleged lateness of such notice but rather the alleged lack of authority on the part of Maserumule Attorneys and of cause Honey Attorneys to act on behalf of the defendant. As already pointed out the plaintiff raised this objection for the first time on the 7 November 2008, vide paragraph 4.05 *supra*.

[21] It is not peremptory for the defendant's attorneys to file together with the defendant's notice of intention to defend proof that they have been duly authorised to act on behalf of the defendant in a given case. It is only when the plaintiff's questions their mandate that they become obliged to deliver written proof of their mandate. This is precisely what the attorneys for the defendants did in this case. They delivered the requisite notice, vide paragraph 5.02 *supra*. The plaintiff challenged their mandate – vide paragraph 5.05 *supra*.

They then served and filed the special power of attorney to proof their mandate – vide paragraph 5.07 *supra*.

[22] Once again it can be seen that the plaintiff failed to follow the correct procedure. He was obliged to give the defendants no less than 5 days notice to deliver written proof that they have appointed Maserumule Incorporated Attorneys to represent them in these proceedings. The plaintiff had no automatic right to approach the court by way of an application to strike out the defendant's notice of intention to defend and the plea on the ground that no written proof of such representative authority was annexed to such notice.

[23] For the reasons enumerated above I am inclined to dismiss the plaintiff's application to strike out with costs. On the facts no court will grant such an application. About that I am certain. The notice of the defendants stands. So does their plea.

[24] As regards the defendant's notice of motion it would be premature to dwell on the merits as set out in the plea. I

shall confine this judgment to the special pleas they raised.

The one was *res iudicata* the other was prescription.

[25] In the first place the special plea of jurisdiction of *res iudicata*. At paragraph 10 of the particulars of claim the plaintiff alleged:

“10.

The plaintiff was found guilty by the third defendant for refusing to work **night shift** and his service contract was terminated on the 22nd September **1999** by the third defendant on a **false pretext** that the plaintiff's service contract was terminated by Ms. **Cecilia Khuzwayo** as she then was **(SENIOR GENERAL MANAGER HUMAN RESOURCES)**

Annexure “B” is hereto.”

[26] At paragraph one of the plea the defendants admitted part of the foregoing allegation but averred that the same issue had previously been raised between the same parties, adjudicated and finalised. I deemed it important to incorporate paragraph 1 of the defendant's plea as is.

“1. **Res Judicata**

- 1.1 The plaintiff's action arises out of the termination of his employment contract by the 4th Defendant on or about 22 September 1999.
- 1.2 In May 2000, the Plaintiff challenged the termination of his employment contract by the 4th Defendant by referring a dispute to the CCMA in terms of section 191 of the Labour Relations Act, 66 of 1995, as amended ("the LRA"), under case no FS 16219.
- 1.3 On 13 December 2002, the CCMA decided that the termination of Plaintiff's employment contract by the 4th Defendant was procedurally and substantively fair.
- 1.4 In 2003, the Plaintiff instituted an application in the Labour Court to review and set aside the award issued by the CCMA on 13 December 2002. On 14 October 2004, the Labour Court dismissed the Plaintiff's review application and upheld the decision of the CCMA.
- 1.5 The Plaintiff appealed against the judgment of the Labour Court to the Labour Appeal Court. On 20 March 2007, the Labour Appeal Court also found the termination of the Plaintiff's employment contract to have been fair and dismissed the appeal.
- 1.6 On 30 July 2007 the Plaintiff applied for leave to appeal to the Supreme Court of Appeal. On 20 November 2007 the Supreme Court of Appeal refused the Plaintiff leave to appeal.

1.7 On 03 December 2007 the Plaintiff applied to the Constitutional Court for leave to appeal against the judgment of the Labour Appeal Court. On 18 February 2008, the Constitutional Court dismissed the application for leave to appeal.

1.8 During February or March 2008 the Plaintiff applied to the Constitutional Court for the rescission of its decision to dismiss his application for leave to appeal. On 22 May 2008, the Constitutional Court dismissed his application for rescission.

1.9 The case between the Plaintiff and the Defendant herein has already been decided by the CCMA and by the other courts as stated above.

1.10 In the premises, the Plaintiff's claim should be dismissed with costs."

[27] As can be seen or ascertained through the history of the court records as conveniently summed up in paragraph 5 *supra* the plaintiff did not replicate instead he took a number of steps that had nothing or very little to do with the essence of the plea.

[28] The fourth defendant went a step further and filed an application in terms of section 2 of the Vexatious

Proceedings Act, No. 3 of 1956 – vide paragraph 5.06 *supra*.

It seeks an order declaring the plaintiff a vexatious litigant and restraining him from instituting any future legal proceedings against the fourth defendant without the leave of the court concerned. The fourth defendant also seeks an order setting aside these current proceedings.

[29] The fourth defendant's application is opposed – vide paragraph 5.09 *supra*. The grounds of the plaintiff's opposition are very difficult to ascertain. His answering affidavit which he wrongly labelled as a replying affidavit is riddled with all sorts of allegations, caselaw, legal rules, legal principles, constitutional provisions, insinuations and outright accusations against whosoever crossed his path in the corridors of justice throughout his litigious journey over the past ten long years.

[30] The only meaningful point he made was his argument that the 4th defendant's deponent was not duly authorised to represent the 4th defendant. Indeed there was no specific resolution annexed to the founding affidavit authorizing Mr T Mathibe to act on behalf of the 4th defendant. However, his

avermment that he was the general manager in the litigation department was not attacked. I am of the view that generally in the commercial world general managers do have such general representative powers to defend actions against their employers. Moreover, during the past ten years the 4th defendant has consistently defended on various platforms, all sorts of actions instituted by the plaintiff. Therefore, it is unthinkable that this particular action would go undefended.

[31] By virtue of my discretionary powers, I condoned the omission by the 4th defendant in much the same way as I have condoned the plaintiff's failure to file written heads of argument. It was in the interest of justice to deal with the substance rather than the form of this controversy that has besieged the counts for a decade. The circumstances of this case are such that I could have heard this application only because it was quite decisive and desposive of the entire matter. But I allowed the plaintiff to have his day in court.

[32] The fourth defendant's deponent, Mr Thabang Mathibe, the general manager in the litigation department sketched the

following chronological background of the fourth defendant's legal battles with the plaintiff.

- “7. The Respondent was employed by the Applicant as a Production Assistant on 01 June 1989. He was charged and dismissed by the Applicant on 22 September 1999 after he was found guilty of a serious misconduct of refusing to work night shifts. The Respondent was contractually bound to shifts and in breach when refusing to work night shift.
8. After his dismissal, the Respondent referred an unfair dismissal dispute to the CCMA in terms of the Labour Relations Act, 66 of 1995, as amended (“the LRA”). The dispute was arbitrated under the case number **FS16219** IN 2002. The CCMA issued an arbitration award on 13 Desember 2002 in which the dismissal of the Respondent was found to have been both procedurally and substantively fair. The said award is attached hereto marked “**P 1**”.
9. The Respondent was not satisfied with the findings and decision of the CCMA and launched review proceedings to the Labour Court. The Labour Court upheld the CCMA decision and dismissed the review application on 14 October 2004. A copy of the judgment of the Labour Court in this regard is attached hereto marked “**P2**”.

10. The Respondent appealed against the judgment of the Labour Court to the Labour Appeal Court. His appeal was dismissed on 20 March 2007. The judgment of the Labour Appeal Court is attached hereto marked **"P3"**.
11. He was again not satisfied with the judgment of the Labour Appeal Court and launched an application to rescind same. On 29 June 2007, the rescission application was dismissed by the Labour Appeal Court as it was irregular. A copy of the Labour Appeal Court judgment in this regard is attached hereto marked **"P4"**.
12. On 30 July 2007 the Respondent approached the Supreme Court of Appeal seeking leave to appeal against the judgment of the Labour Appeal Court regarding his dismissal by the Applicant.
13. Despite the Applicant having delivered opposing papers to the application for leave to appeal, the Respondent brought an application for default judgment. The applications for leave to appeal and default judgment were both dismissed with costs by die Supreme Court of Appeal on 20 November 2007. A copy of the court order in this regard is attached hereto marked **"P5"**.
14. On 03 December 2007, the Respondent approached the Constitutional Court seeking leave to appeal against the judgment of the Labour Appeal court that upheld the CCMA award. A copy of the Respondent's application

for leave to appeal to the Constitutional Court is attached hereto Marked “**P6**”.

15. The Constitutional Court dismissed the Respondent’s application on 18 February 2008. A copy of the court order regarding same is attached hereto marked “**P7**”.
16. During February or March 2008, the Respondent launched an application to the Constitutional Court seeking to rescind its judgment dismissing his application for leave to appeal. The Constitutional Court dismissed the rescission application on 22 May 2008. A copy of the Court order in this regard is attached hereto marked “**P8**”.

[33] Neither in his answering affidavit nor in his legal argument could the plaintiff persuasively dispute the foregoing hard facts other than to hold the decisions of all those legal forums in contempt. He accused, ridiculed and insulted the judges’ right from the top of judicial hierarchy – Judge Langa CJ down to the very first rung – Moloi AJ and many other judges between the two extremes – vide paragraph 5.19 *supra*.

[34] Mr Lengane contented on behalf of the fourth defendant that the plaintiff has not only being unduly persistent in instituting

a plethora of legal proceedings against the fourth defendant, but that he was now persecuting his client concerning the same cause of action, a creature long dead and buried. In spite of been unsuccessful at each and every stage along the way, he kept on bouncing back although the proceedings he brought were found groundless and devoid of any prospects of success let alone genuine merits for eventual victory.

[35] I am persuaded by Mr Lengane's submission. Despite the fact that various forums have found that the respondent's complaint against the applicant was groundless, the respondent has once again instituted an action in this court to determine the same issue upon which various forums have already pronounced. At the hearing of this current application the question in the case in respect of this first special plea was whether or not the issue raised in the summons had already been previously raised and decided as between these same parties. I am of the firm view that it was, and because it was, the matter is in legal parlance, *res judicata*. Accordingly I find that the special plea of *res judicata* is a conclusive answer to the plaintiff's summons

and declaration. I would, therefore, set the current proceedings aside.

[36] The plaintiff, the first, second and third defendants were at all times material to this course of action fellow employees. They were all in the employ of the fourth defendant. The three defendants were closely involved in the workplace disciplinary hearing where the plaintiff was accused of misconduct. Seemingly the first, second and third defendants acted as the prosecutor, complainant and the chair respectively. Therefore it is quite clear that the real parties in this whole case are the plaintiff and the fourth defendant. Throughout the entire history of this dispute which stretches back to the 22 September 1999, the parties are the same and the plaintiff in the current action seeks precisely the same order as in the original proceedings, that is to say an order declaring the determination of his contract of employment unlawful coupled with a claim for compensation.

[37] In the second place the fourth defendant pleaded that the plaintiff's claim had become prescribed. The averments pertinent to this plea were the following:

"2. PRESCRIPTION

- 2.1 The 4th Defendant terminated the Plaintiff's contract of employment on 22 September 1999.
- 2.2 In his Particulars of Claim, the Plaintiff alleges that the Defendants breached his contract of service by terminating it on 22 September 1999.
- 2.3 The summons was issued on 22 September 2008.
- 2.4 In terms of section 11(d) of the Prescription Act 68 of 1969, Plaintiff's claim prescribed on or about 23 September 2002.
- 2.5 The Defendants accordingly pray that the Plaintiff's claim be dismissed with costs."

[38] The plaintiff failed to deal with the special plea in his answering affidavit. However, during argument he contended, rather strangely, that his claim had not prescribed. He advanced an absurd argument that his course of action are aroused not on the 27 September 1999 when his contract of employment was terminated but on the 20th March 2007 approximately 7,5 years later when the

Labour Appeal Court dismissed his appeal. I have no hesitation in upholding Mr Lengane's submission that the matter is not only *res judicata* but that it has also become prescribed.

[39] A number of forums have consistently found against the plaintiff. Without any exception, they all came to one and the same conclusion that his claim against the fourth defendant was groundless. All this unfavourable decisions notwithstanding, the plaintiff has gone back to rewind the clock. He has now taken a detour this way – to institute in this court an old action afresh to determine the same expired issue upon which so many other forums have already pronounced their decisions.

There is substance in the submission that the action which the plaintiff brought to this court epitomizes the sort of an abuse of the court process against which the court must invoke its inherent powers to protect itself, our formal law system and the proper administration of justice.

[40] I am persuaded that the facts as set out in the applicant's founding affidavits (defendants) read together with the tone of the respondent's answering affidavit (plaintiff) clearly demonstrate the respondent's sole intention to harass, annoy and financially prejudice the applicant, his former employer. The endless, persistent and groundless acts of harassment, annoyance and prejudice depict the respondent as a classical example of a vexatious litigant. See **COHEN v COHEN & ANOTHER** 2003 (1) SA 103 (C) paragraph 14, **ABSA BANK LIMITED v DLAMINI** [2008] 2 ALL SA 405 (T) paragraphs 19 – 20, **AFRICAN FARMS AND TOWNSHIPS LTD v CAPE TOWN MUNICIPALITY** [1963] 3 ALL SA 20 (AD).

Any litigation more frivolous, improper and abusive than this particular litigation appears rare to find.

[41] The applicant reasonably apprehends that the respondent would probably not abide by the decision of this court. His track record speaks for itself. The fearful belief of the applicant that the respondent will probably institute fresh proceedings elsewhere in the future is not without substance. Such likelihood is more probable than not. The

respondent's vexatious appetite for persistent, frivolous and abusive litigation is highly implicated. The purpose of section 2, Vexatious Proceedings Acts, No. 3 of 1956 is designed to eradicate such persistent abuse of the court process.

[42] The purpose of this legislation is not to deny a litigant the right of access to court services. To screen and not to bar a vexatious litigant, who has persistently and without any reasonable ground instituted hopeless proceedings, is the prime evil the legislation was enacted to achieve. Such relative screening, as opposed to absolute barring, constitutes justifiable limitation of a vexatious person's right of access to the civil justice system.

[43] This screening mechanism is necessary to protect two important interests. Firstly the particular individual interests of the victim of vexatious litigation who has repeatedly been subjected to endless and senseless acts of harassment, embarrassment and financial prejudice occasioned by unmeritorious litigation. Secondly the general public interest in the effective functioning of the courts and in the proper

administration of justice unimpeded by the groundless and vexatious proceedings that fruitlessly clog the civil justice system. See **BEIMASH & ANOTHER /v ERNEST & YOUNG AND OTHERS** 1999 (2) SA 116 (CC) at para 15.

[44] In the circumstances I am inclined to restrain the respondent from instituting future proceedings against the applicant without the leave of the court or forum concerned first being had and obtained.

[45] Accordingly I make the following orders as regards action proceedings:

45.1 The plaintiff's application for judgment by default is dismissed with costs.

45.2 The plaintiff's application to strike out is likewise dismissed with costs.

45.3 The defendant's special pleas are upheld with costs.

45.4 The plaintiff's action is dismissed with costs.

[46] Accordingly, I make the following orders as regards motion proceedings:

45.1 The respondents, in other words, the plaintiff is declared a vexatious litigant.

45.2 The current proceedings are hereby nullified and set aside.

45.3 The respondent, in other words the plaintiff, is restrained from instituting future proceedings against the applicant, in other words, the fourth defendant, in any court, tribunal or forum whatsoever without the leave of such court, tribunal or forum first being had and obtained.

45.4 The respondent is ordered to pay the applicant's costs relating to the vexatious application.

M. H. RAMPAL, J

On behalf of plaintiff/respondent: Mr. P. I Papane

In person

BLOEMFONTEIN

On behalf of defendant/applicant: Adv. M. Lengane

Instructed by:
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