

IN THE HIGH COURT OF SOUTH AFRICA



GAUTENG LOCAL DIVISION, JOHANNESBURG

CASE NO: 2023-017065

- (1) REPORTABLE: YES / NO
(2) OF INTEREST TO OTHER JUDGES: YES/NO
(3) REVISED.

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DATE

SIGNATURE

In the matter between:

**CONGRESS OF TRADITIONAL LEADERS
OF SOUTH AFRICA**

First Applicant

**CONTRALESA INVESTMENT HOLDINGS
(PTY) LTD**

Second Applicant

and

THE GURU LINK (PTY) LTD

First Respondent

SHERIFF PRETORIA EAST

Second Respondent

Coram: Maenetje AJ

This judgment was handed down electronically by circulation to the parties' legal representatives by email and uploading on Caselines. The date and time for hand-down is deemed to be 10h00 on 6 June 2024.

JUDGMENT

Maenetje AJ:**Introduction**

- [1] In this matter the applicants seek an interim interdict on an urgent basis to suspend the operation and execution of a writ issued against the applicants pending the final adjudication of a rescission application to set aside an order granted by Acting Judge Ndlovane on 6 June 2023.
- [2] Ndlovane AJ granted an order in the absence of the applicants for the payment of an amount of R410 685,00 for services rendered by the first respondent to the first applicant. The amount is for additional services rendered by the first respondent to the first applicant under an oral agreement. The writ of execution attaches the second applicant's bank account. The amount of R410 685,00 is due to be transferred out of the second applicant's bank account pursuant to the writ of execution into the bank account of the first respondent. The first respondent has refused to give an undertaking not to enforce the writ of execution and obtain the transfer of the amount of R410 685,00 to it pending the outcome of an application to rescind the order of Ndlovane AJ.

The merits

- [3] The key issues are whether the application is urgent, and whether a prima facie case is made out for interim relief on behalf of both applicants, or one of them.

- [4] Part of the applicants' alleged bona fide defence to be advanced in the anticipated rescission application is that the oral agreement was concluded between the first applicant and the first respondent. The second applicant was not party to the agreement and is not liable to the first respondent in any amount under the oral agreement.
- [5] The answering affidavit of the first respondent asserts that Mr Mkiva, the deponent to the applicant's founding affidavit, purported to represent both applicants when concluding the oral agreement. The first respondent relied on this representation in concluding the oral agreement. However, at paragraph 7 of the answering affidavit, the first respondent says simply that the oral agreement was concluded with Contralesa. This appears to be a reference to the first applicant. Later in the answering affidavit the deponent says the first and second applicants were presented to the first respondent as one party and therefore the oral agreement was concluded between it and both applicants. It also says that the second applicant made the initial payment of R1 463 294,00 for the services that the first respondent rendered to the first applicant under the oral agreement. It contends for these reasons that any rescission application is unlikely to raise any triable issue.
- [6] I do not have to finally determine the dispute as to which of the applicants is a party to the oral agreement. This will be determined by the court hearing the rescission application, i.e., whether there is a bona fide defence to be raised that the second applicant was not a party to the oral agreement.

[7] I accept prima facie that the applicants have made out a case that the applicants are separate entities. There is no allegation that the second applicant itself represented that Mr Mkiva represented it as well in negotiating the oral agreement and that it is a part to that agreement. The fact that the second applicant may have made the initial payment for the benefit of the first applicant for services that the first respondent rendered under the oral agreement does not on its own make the second applicant a party to the oral agreement. In this regard, it is clear that the initial summons issued for the recovery of the outstanding payment in the amount of R410 685,00 were issued against the first respondent only. It appears that the second applicant was added after the first respondent struggled to serve process on the first applicant. It would seem also that substituted service was sought and obtained against the first applicant and then utilized to serve process by email purportedly on the second applicant. Prima facie, these latter facts also tend to support the second applicant's case.

[8] I am of the view that the Court hearing the rescission application may, on the facts presented to me, find that there is a bona fide defence that the second applicant was not a party to the oral agreement. To this extent, the order by Ndlovane AJ may be susceptible to rescission as against the second applicant.

[9] If interim relief is not granted and the rescission ultimately succeeds, the second applicant may suffer irreparable harm. There is no evidence before me that if the amount of R410 685,00 is transferred to the first

respondent, but the rescission application succeeds, the first respondent will repay this amount to the second applicant. Counsel for the first respondent submitted that if transferred to the first respondent, the amount of R410 685,00 will be employed towards its business. He submitted further that because the amount will be used in this way, the first respondent will earn revenue that will enable it to repay the amount of R410 685,00 to the second applicant if the anticipated rescission application succeeds. In any event, he submitted, the second applicant can always institute action for the recovery of the amount from the first respondent if the rescission application succeeds. He said the cause of action would be unjustified enrichment. It is plain that this is not a satisfactory state of affairs. There is no guarantee or undertaking that the first respondent will be able to repay the amount of R410 685,00 to the second respondent if the rescission application succeeds.

- [10] Until the rescission application is decided, and without interim relief, the second applicant will suffer prejudice because it will not have access to its funds in the amount of R410 685,00 and any interest that may be earned on the amount. On the other hand, if the rescission application fails, the first respondent may still be entitled to the payment of the amount of R410 685,00. The balance of convenience therefore favours the second applicant. It also has no alternative remedy other than seeking the interim interdict.

Urgency

[11] I find that the application is urgent. The second applicant will not obtain substantial redress in due course because it will, until the rescission application is determined, not have access to its funds in the amount of R410 685,00 and any interest it may earn. A claim based on unjustified enrichment is not a substantial remedy.

[12] Counsel for the first respondent placed a lot of reliance on a contention that any urgency was self-created. The applicants have explained the steps they took since they became aware of the attachment on 3 May 2024. On 8 May 2024 the applicants' attorneys requested an undertaking by the first respondent to suspend the execution process. They sent a similar request to the second respondent. The applicants' attorneys were granted access to Caselines on 10 May 2024. The undertaking requested was refused. On 12 May 2024 the deponent to the applicants' founding affidavit left South Africa to the Peoples' Republic of China and returned on 21 May 2024. This application appears to have been launched on 22 May 2024. Once the deponent returned to the Republic on 21 May 2024, a matter that is not disputed, this application was launched on 22 May 2024. Although the applicants could have acted soon after 10 May 2024, this is not fatal to the application. The key consideration is whether they may obtain substantial redress in due course. I have found that they may not. It also appears to me that the urgency is a continuing one since the second applicant's funds in the amount of R410 685,00 may be

transferred to the first respondent any time and there is no undertaking to suspend the transfer.

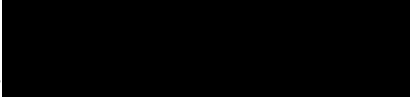
[13] In the circumstances, I find that the applicants have made out a case for urgency. I also find that they have out a prima facie case for interim relief.

[14] Counsel for the first respondent submitted that the first respondent will suffer prejudice since the applicants have not yet instituted a rescission application and may delay in doing so. I suggested that the Court could add a condition regarding the time period within which the rescission application is to be launched. There was no resistance to this suggestion.

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

- (1) The matter is heard as one of urgency, non-compliance with the prescribed forms, manner of service and time frames are condoned in accordance with the provisions of Rule 6(12) of the Uniform Rules of Court.
- (2) Pending the final determination of an application for the rescission of the order granted by Acting Judge Ndlovane on 6 June 2023, the respondents are interdicted from effecting the operation and execution of the writ issued against the applicants, which shall include but is not limited to the transfer of the amount of R410 685,00 from the second applicant's bank account set out at paragraph 16 of the applicants' founding affidavit to the first respondent.

- (3) The rescission application referred to in paragraph (2) above shall be instituted within a period of 30 days from the date of this order.
- (4) The first respondent shall pay the applicants' costs of this application for interim relief.


NH MAENETJE
ACTING JUDGE OF THE HIGH COURT
GAUTENG LOCAL DIVISION, JOHANNESBURG

Date of hearing : 05 June 2024

Date of judgment : 06 June 2024

For the applicants: L Matsiela

Instructed by Poswa Inc

For the 1st respondent: A Mabentsela

Instructed by Baepi Dyasi Attorneys