



THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG

Not Reportable
Case No: J140/24

In the matter between:

RAKOKWANE MALOKA

Applicant

and

STANDARD BANK OF SOUTH AFRICA LTD

First Respondent

LIBERTY HOLDINGS

Second Respondent

STANLIB

Third Respondent

**COMMISSION FOR CONCILIATION, MEDIATION
AND ARBITRATION**

Fourth Respondent

Heard: 5 March 2024

Delivered: 5 March 2024

EX TEMPORE JUDGMENT

PHEHANE, J

- [1] The applicant has launched a multiplicity of disputes in various related matters in different courts against the first and second respondents.¹
- [2] The applicant now approaches this Court on an urgent basis, in essence, as far as I can decipher his case, to seek various orders, in the main, a protection order to prevent harassment by the first and second respondents against him. According to the applicant, the first and second respondents are harassing him in his capacity as a witness in several disputes involving the same parties. The applicant seeks “a protection order in the form of legal assistance that comes in the waiver for costs in the imminent hearings under case number J423/22 and JR696/21” launched in this Court, in respect of an application against him relating to a claim for security of costs.
- [3] The dispute under case number J423/22 concerns a civil matter and it is scheduled for hearing on 7 May 2024. Mr. Thobela for the first respondent submits that the matter is scheduled for the hearing of the first respondent’s application for security of costs to be paid by the applicant, which application is unopposed.
- [4] The application under case number JR696/21 pertains to a review application. It would appear that this review application was archived and the matter is scheduled for hearing on 24 April 2024 to hear, it would seem, an application for the reinstatement of the review application.
- [5] An application launched in the High Court² in which the applicant seeks a final protection order and to be placed under witness protection, is scheduled for hearing on 11 March 2024.
- [6] Annexures “A1” and “A2” to the answering affidavit by the second respondent in this present application are not attached and do not appear in the index of

¹ See: second respondent's answering affidavit at para 16 on p 149 and para 26 and its subparagraphs on p 152.

² Details of this application are not pleaded. It is not disputed that a matter is pending in the High Court launched by the applicant for a final protection order in respect of related facts as this present matter.

the pleadings bundle. I enquired from the applicant why this was the case, and he could not explain. Annexure “A1” is the minute of the judicial case management process presided over by Prinsloo J on 16 November 2023, pertaining to several processes that the applicant has instituted in this Court. Annexure “A2” is the answering affidavit by the second respondent under case number J423/22, in which *inter alia*, the second respondent records the numerous cases launched by the applicant. Both the first and second respondent submit that they have had to incur significant costs defending unmeritorious, frivolous and vexatious litigation instituted by the applicant in circumstances where under two judicial management processes in the High Court and in this Court, the applicant has been warned against his conduct of pursuing a multiplicity of unmeritorious, related disputes. An order for the payment of costs that have been made against him for his conduct have not deterred the applicant – he persists relentlessly with instituting unmeritorious disputes, such as the current dispute.

- [7] Mr. Thobela submits that pursuant to an order dated 15 November 2023 by Senyatsi J under case number 1994/2021 in the Gauteng Division of the High Court, which matter was stayed pending the determination of an application to compel the applicant to pay security for costs in terms of Uniform Rule of Court, Rule 47, and pursuant to an order in the Gauteng Division of the High Court under case number 19942/21 per Du Plessis AJ ordering the applicant to furnish the first respondent with security in respect of all applications brought by the applicant against the first respondent and staying such application/s until such security is furnished, the applicant, in total disregard of the said Court order, launched an urgent application in the High Court under the same case number on 30 January 2024, in which the applicant seeks similar relief premised on similar facts as in the present case before this Court.³ This is a case of history repeating itself although in a very short space of time. The applicant confirms that he is well aware that in the judicial case management meeting presided over by Prinsloo J, he was informed that he faces a jurisdictional challenge in his dispute under case number J423/22 and

³ See: supplementary heads of argument by the first respondent.

is exposed to a costs order and he is aware that he ought to file opposing papers in an application that has since been launched by the first respondent for him to pay security for costs, but he nonetheless, failed to deliver an answering affidavit and elected to file this urgent application to “absolve” him from paying security for costs.⁴ There is no clearer descriptor for abuse of Court process.

- [8] It would appear that the “trigger” for approaching this Court on an urgent basis, is that photographs were taken of the applicant’s vehicle on 29 January 2024. The second respondent avers that this allegation by the applicant regarding his vehicle being photographed is due to the applicant being apprehensive that the respondent may execute against his vehicle to defray the costs already granted against the applicant in previous litigation.⁵

Preliminary points

- [9] The first respondent raises two preliminary points.
- [10] The first is this Court lacks jurisdiction to adjudicate the applicant’s claim on the basis that there has at no point, existed an employment relationship between the parties and that the claims by the applicant arise from the banking relationship between the parties. In addition, the first respondent avers that this Court lacks jurisdiction to adjudicate the applicant’s claim it is premised on the provisions of the Protection From Harassment Act⁶ (the Harassment Act).
- [11] The second is the applicant has failed to make out a case for urgency and on this basis the application ought not to succeed.
- [12] The second respondent raises three preliminary points.
- [13] The first is the same as that raised by the first respondent on jurisdiction.

⁴ See: para 2.3 of the amended notice of motion.

⁶ Act 17 of 2011.

- [14] The second is *lis pendens* in view of the three aforesaid applications brought by the applicant in which are pending before this Court and the High Court in respect of the same matters.
- [15] The third preliminary point, is lack of urgency.
- [16] The second respondent contends that the applicant is well aware of the claim for security of costs brought against him in the pending matters following the judicial case management process presided over by Prinsloo J on 16 November 2023 and that he has approached this Court for protection in the form of legal assistance to be absolved from furnishing security for costs in these aforesaid matters. In the circumstances the second respondent contends that the application is not urgent and is an abuse of Court process.
- [17] The applicant brings this application in terms of the provisions of section 158(1)(a) of the Labour Relations Act⁷ (LRA), section 50(1)(e) and (h) of the Employment Equity Act,⁸ section 2 of the Harassment Act and he also places reliance on the provisions of the Intimidation Act⁹ and Domestic Violence Act.¹⁰
- [18] This Court is a creature of statute deriving its jurisdiction and power and the provisions of sections 157 and 158 of the LRA respectively. This Court lacks jurisdiction to grant a protection order in terms of the provisions of the Harassment Act.¹¹

Costs

⁷ Act 66 of 1995, as amended.

⁸ Act 55 of 1998.

⁹ Act 72 of 1982.

¹⁰ Act 116 of 1998.

¹¹ The Harassment Act makes provision for which Court has jurisdiction to grant orders in terms of that Act. This Court is not such a Court.

[19] The applicant makes much about the incident of a photograph being taken of his vehicle on 29 January 2024 as a basis to approach this Court on an urgent basis and sets out a litany of incidents dating back to 2019, that preceded the incident of 29 January 2024 to a paint picture of harassment against him.

[20] This application in the main, is brought to absolve the applicant from the payment of costs in two matters that already pending before this Court in which costs are sought against him. The application is unmeritorious, is an abuse of Court process and has unnecessarily clogged up the urgent roll of this Court. The applicant has been afforded the opportunity in the Court order per Prinsloo J of 16 November 2023 to file an answering affidavit opposing the application for security of costs by 8 December 2023. Instead of doing so, he files this baseless, convoluted urgent application, which mirrors his application in the High Court. This as I have stated, is an abuse of Court process. The respondents are caused to incur costs opposing baseless multiplicity of processes launched in various Courts.

[21] As a result of the applicant's conduct as aforesaid, I exercise my discretion in terms of the provisions of section 162(2)(b)(i) of the LRA to make an order as to the payment of costs as against the applicant. In light of the abuse of Court process, punitive costs are warranted.

[22] In view of the afore-going, the following order is made:

Order

1. The preliminary points raised by the first and second respondents on jurisdiction are upheld.
2. The second respondent's preliminary point on *lis pendens* is upheld.
3. The application is struck off the roll for lack of jurisdiction.

4. The applicant is to pay the costs of the first and second respondent on a scale as between attorney and own client, which costs include the costs occasioned by the postponement on 21 February 2024.

M. T. M. Phehane

Judge of the Labour Court of South Africa