



IN THE HIGH COURT OF SOUTH AFRICA

GAUTENG DIVISION, PRETORIA

CASE NO: 2023/122761

DELETE WHICHEVER IS NOT APPLICABLE

- (1) REPORTABLE: **NO**
- (2) OF INTEREST TO OTHER JUDGES: **NO**
- (3) REVISED: **NO**

Date: 19 September 2024 Signature: 

In the matter between:

ADOLF JOHAN HENDRIK HARTSENBERG

Applicant

And

ITECO (PTY) LTD

First Respondent

APBCO VERSEKERINGSMAKELAARS (PTY) LTD

Second Respondent

JUDGMENT

A. INTRODUCTION

[1] In this matter, the applicant Mr Hartsenberg claims damages for the restoration of income lost in the amount of R150 000.00 as a result of what he calls the unnecessary motion court application¹ and payment in the amount of R2 777 900.40 minus 8 days already paid, for October 2023, for the alleged breach of the applicant's employment contract by the respondents.²

[2] This application was originally brought as a counterclaim in an earlier urgent application by the respondents who were the erstwhile applicants in the urgent application which has since been concluded, but for this application which currently serves before me.

[3] At the hearing of the application, Mr Hartsenberg attempted to sway the court to adjudicate upon his counterapplication but that was not to be. Hence this application.

[4] In terms of the order of 8 December 2023, Khwinana A.J. ordered and directed Mr Hartsenberg to:

¹ Hartsenberg's heads of argument para 6.

² Ibid para 7.

- 4.1 “...within 2 (two) working days from date of service of this order on the Respondent, to take all such steps that are necessary and required by the Applicant and it's IT Technicians and by doing so to give the Applicant full access, usage and control over the Cipher-Computer System including the generating and/or production and implementation of any and all required Codes and Scripts relating to the Cipher-Computer System.”³ And
- 4.2 Interdicted and restrained Mr Hartsenberg from interfering in any manner whatsoever with the Cipher-Computer System. And
- 4.3 The Applicant is to *ex gratia* remunerate the Respondent at a rate of R 801.32 per hour for compliance with prayer 1.1 above, on condition that the Respondent Invoices the Applicant for actual time spend, and payment will be made by the Applicant to the Respondent then within 7(seven) days from date of Invoice.⁴

[5] The respondents oppose Mr Hartsenberg's application and have launched an application to have the applicant held in contempt of the court order above

³ Para 1.1 of Court order.

⁴ Para 1.3 Court Order.

(handed down in the aforesaid urgent application on 8 December 2023). Mr Hartsenberg opposed the application without success.

- [6] Mr Bucksteg who appeared for Mr Hartsenberg before me, confirmed the facts as stated above.

B. BACKGROUND

- [7] Mr Hartsenberg occupied the dual roles of being a director of the first respondent and an employee of the latter. On 1 October 2023 he resigned as director of the first respondent and on 8 October 2023 resigned as an employee of the first respondent.

- [8] It is common cause between the parties that Mr Hartsenberg's employment had been governed by a fixed term contract with a non-variation clause providing for Mr Hartsenberg to devote 45 hours of work per week.

- [9] Mr Eastes submitted on behalf of the respondents that:

9.1 Mr Hartsenberg is seeking damages by way of application procedure in circumstances where the amount of R150 000.00 and the R2 700 000.00 is not a liquidated and quantified amount and there exists no basis for it.

9.2 Mr Hartsenberg advances a very strange cause of action because a court has already dealt with the matter and made a

judgment with an order in favour of ITECO and ABPCO Versekeringsmakelaars.

9.3 Furthermore, there are massive disputes of fact between the parties. And

9.4 The order of 08 December 2023 was an order granted by consent between the parties.

[10] I find it impossible to disagree with the points submitted above, none of which were denied or contradicted on behalf of Mr Hartsenberg.⁵ On a consideration of trite principles, it follows that Mr Hartsenberg's application for damages in circumstances as sketched above, cannot succeed.⁶

C. SUBMISSIONS

[11] Mr Bucksteg stated in reply that the labour dispute between the parties will be referred to the Arbitration Foundation of South Africa ("AFSA") for arbitration.

[12] In dealing with the contempt application against Mr Hartsenberg, it was submitted that Mr. Hartsenberg was confused as to how he should perform in obedience of the court order of 08 December 2023. He alleged that the order was unclear, ambiguous and vague such that this court should not find him to be

⁵ Joint practice note of the parties para 12.

⁶ *Room Hire Co (Pty) Ltd v Jeppe Street Mansions (Pty) Ltd* 1949 (3) SA 1155 (T).

in contempt of the said court order. The act of non-compliance with the order has not been denied or challenged in any way.

[13] The above submission leaves one incredulous, due to the admitted fact that the order of 08 December 2023, on which the contempt application is based was by consent of the parties, which includes the respondent thereon, Mr Hartsenburg.

[14] The order itself has not been varied or rescinded. It therefore remains extant.⁷

D. CONCLUSION

[15] In the result, the following is ordered:

- a) The damages counter application of Mr Adolf Johan Hendrik Hartsenberg is dismissed with costs on a scale as between party and party.
- b) It is declared that Adolf Johan Hendrik Hartsenberg is in contempt of the urgent court order granted by this court under case number 2023/122761.
- c) Mr Adolf Hendrik Hartsenberg is incarcerated for a period of 30 (thirty) days for the contempt of court as envisaged in (b) above.
- d) The incarceration of Mr Adolf Hendrik Hartsenberg, as envisaged in (c) above, is suspended, on condition that Adolf Hendrik Hartsenberg, within 30

⁷ Oudekraal Estates (Pty) Ltd v City of Cape Town 2004 (6) SA 222 (SCA).

(thirty) days from date of this order, fully comply with the urgent court order of this court under case number 2023/122761, which order is dated 8 December 2023.

- e) Mr Adolf Johan Hendrik Hartsenberg is ordered to pay the costs of the contempt of court application on a scale as between party and party.



J.S. NYATHI

Judge of the High Court

Gauteng Division, Pretoria

Date of hearing: 09 September 2024

Date of Judgment: 19 September 2024

On behalf of the Applicant: Adv. H. Bucksteg

Instructed by:

Carel J Schoeman Incorporated; Pretoria

e-mail: carel@carelschoeman.com

carel.schoeman@mweb.co.za

On behalf of the Respondent: Adv. J.Eastes

Instructed by:

Du Bryn & Morkel Attorneys, Pretoria

e-mail: chris@dbmlaw.co.za

Delivery: This judgment was handed down electronically by circulation to the parties' legal representatives by email and uploaded on the CaseLines electronic platform. The date for hand-down is deemed to be 19 September 2024.