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**IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA**

CASE NUMBER: 25018/2022

1. REPORTABLE: ~~YES~~/NO

2. OF INTEREST TO OTHER JUDGES: ~~YES~~/NO

3. REVISED

DATE: 28 October 2024

SIGNATURE:

In the matter between:

DIAMOND PANEL BEATERS AND TOWING CC

APPLICANT

and

**MOKS TOWING AND RECOVERY CC
RESPONDENT**

FIRST

DIJO, SIMON MOEKETSI

SECOND RESPONDENT

JUDGMENT

COERTZEN AJ:

[1] The applicant applies for a final order on motion proceedings, to restrain and interdict the first and second respondents, or any other third party acting on their instructions, from preventing the applicant from rendering roadside assistance, towing and storage services to its customers, including but not

limited to the Temba and Hammanskraal areas.

[2] The first and second respondents ('the respondents') oppose the application.

[3] The second respondent is the sole member of the first respondent.

JURISDICTION:

[4] The respondents dispute that this court has jurisdiction, the contention being that the allegations in the founding affidavit do not prove that this court has jurisdiction to hear the matter.

[5] It is alleged in the founding affidavit that the first respondent has its registered address at 2[...] U[...] [...], Temba and that this address is also the '*employment address*' of the second respondent. These allegations are admitted in the answering affidavit.

[6] The applicant alleges that the aforementioned registered address of the first respondent falls within the jurisdiction of this court. This is disputed by the respondents.

[7] The applicant relies in the founding affidavit on incidents which occurred in the Hammanskraal area.

[8] The respondents dispute that the Temba and Hammanskraal areas fall within the jurisdiction of this court.

[9] However, the second respondent discloses in the answering affidavit that he is resident in Soshanguve. There is no dispute that Soshanguve falls within the jurisdictional area of this division. On the evidence, the second respondent resides within the jurisdiction of this court.

[10] In terms s 21 of the Superior Courts Act 10 of 2013:

‘(1) A Division has jurisdiction over all persons residing or being in, and in relation to all causes arising and all offences triable within, its area of jurisdiction and all other matters of which it may according to law take cognisance...

(2) A Division also has jurisdiction over any person residing or being outside its area of jurisdiction who is joined as a party to any cause in relation to which such court has jurisdiction or who in terms of a third party notice becomes a party to such a cause, if the said person resides or is within the area of jurisdiction of any other Division.’

[11] I will assume in favour of the applicant that this court has jurisdiction over the first and second respondents.

THE MERITS:

[12] It is common cause that the applicant and the first respondent compete in the same industry, which includes towing and roadside assistance.

[13] Both the applicant and the first respondent make use of a platform provided to them by *Firstassist*, a company in the insurance industry, with whom they both have service level agreements.

[14] The *Firstassist* call centre dispatches tow truck companies to accident scenes, through an application installed on the tow truck drivers' phones.

[15] The deponent to the applicant's affidavit is the sole member of the applicant.

[16] It is alleged in the founding affidavit that *‘[d]uring or about January 2022’,* the first and/or second respondents, together with the employees of the first respondent, acting on the instructions of, or on behalf of the first and/or second respondents, *‘embarked on a continuous unlawful conduct of taking the law into their hands by blocking the applicant from rendering the services in the affected areas [Temba and Hammanskraal] and thereby infringing on the applicant's constitutional right to trade freely’.*

- [17] The founding affidavit however lacks particularity of the respondents' alleged unlawful conduct '*during or about January 2022*'.
- [18] The applicant relies in the main on an incident that occurred '*on or about 27 January 2022*'. It is alleged that two of the applicant's drivers received a job allocation from *Firstassist* to attend to a scene '*located in the Hammanskraal area*.' The applicant alleges that on their arrival at the scene, the applicant's drivers '*were prevented by the first respondent's employees*' (presumably from rendering services). It is not alleged in the founding affidavit in what manner the applicant's employees were '*prevented*' from rendering services.
- [19] It is alleged in the founding affidavit that as a result of the unlawful conduct of the first respondent's employees, *Firstassist* had to intervene. The applicant does not provide any particularity of how exactly *Firstassist* intervened.
- [20] It is alleged in the founding affidavit that after a prolonged wait, the applicant's employees eventually left the scene without rendering any services, resulting in loss of revenue for the applicant.
- [21] The applicant alleges that it is unable to exercise its right to trade freely and to fulfil its obligations in terms of the *Firstassist* agreement.
- [22] The applicant relies on a further incident which occurred '*on or about March 2022*', where '*the respondents*' and unknown accomplices, approached and threatened one of the applicant's drivers '*at Hammanskraal*'. They (presumably the respondents and their accomplices), warned the applicant's driver not to operate in the area, failing which '*they will burn the applicant's towing truck*'. According to the allegations, the second respondent stated the area to be the territory of the first respondent.

- [23] It is by no means clear from the applicant's papers whether it is the applicant's case that the second respondent was actually physically present when the alleged incident occurred.
- [24] In the answering affidavit, the respondents deny the allegations in the founding affidavit.
- [25] As for the incident which occurred on 27 January 2022, the respondents allege that a driver of the first respondent, on his way back from a delivery to the Dinokeng Reserve, came across the scene of an accident where a KIA vehicle has lost control and overturned.
- [26] The first respondent's driver stopped at the scene and called the emergency services. Upon their arrival, the emergency services took the driver of the KIA vehicle, a lady, and a child who was with her, to hospital, while the first respondent's driver waited at the scene for the injured lady's husband.
- [27] The first respondent's driver alerted the *Firstassist* call centre and forwarded the vehicle details to the call centre for authorisation to tow the vehicle.
- [28] After approximately two hours, two towing vehicles, one of which was that of the applicant, arrived at the scene, claiming to have authority from *Firstassist* to tow the damaged vehicle.
- [29] The first respondent's driver disputed their authority, indicating that he was first at the scene, and that he provided the necessary particulars to the *Firstassist* call centre to authorise the first respondent to tow the vehicle.
- [30] The first respondent's driver also informed the second respondent of the incident.
- [31] The second respondent called the *Firstassist* call centre and spoke to the call centre manager to resolve the issue.

- [32] A supervisor intervened after realising that the authority to tow the vehicle ought to have been given to the first respondent. *Firstassist*, withdrew the applicant's authority and gave the first respondent authority to tow the vehicle.
- [33] The other tow truck drivers refused to leave and demanded to tow the vehicle.
- [34] The call centre insisted that the first respondent's driver was first on the scene and that the first respondent ought to have been appointed.
- [35] The other towing vehicles left the scene after their authority was withdrawn.
- [36] The first respondent's driver then towed the vehicle.
- [37] The first respondent subsequently submitted an invoice and was paid for its services by *Firstassist*.
- [38] As for the incident alleged to have occurred during March 2022, the respondents deny any such incident. The respondents point out that the driver of the applicant who was allegedly threatened by the respondents and their accomplices (whose names are not known to the applicant), was previously employed by the first respondent, but left his employment to join the applicant in November 2021.
- [39] The applicant sought leave to file a supplementary founding affidavit dealing with an alleged incident which occurred, according to the affidavit, '*between December 2022 to 29 December 2022*'.
- [40] According to the applicant, two of the applicant's employees stationed at Hammanskraal, were threatened '*by the applicant's brother*' (presumably intended to be a reference to the second respondent's brother), who introduced himself as Teffo Dijo and as an employee of the first respondent.

- [41] The said Teffo Dijo allegedly informed the applicant's employees that they must stop rendering services in the Hammanskraal area. If they did not, 'he [the said Teffo Dijo] *would assault and kill them.*'
- [42] According to the affidavit, the employees of the applicant continue to receive phone calls from Teffo Dijo and other '*unknown persons associated with him*', threatening them about rendering services in the Hammanskraal area.
- [43] The respondents filed a supplementary answering affidavit (and applied for condonation for the late filing thereof).
- [44] In the supplementary answering affidavit, the averments in the applicant's supplementary founding affidavit, are denied.
- [45] To bring finality to the matter, I am inclined to allow the supplementary affidavits, and to the extent necessary, to grant condonation for the late filing of such affidavits.

EVALUATION:

- [46] The requirements for the granting of a final interdict are settled, i.e. a clear right; an injury actually committed or reasonably apprehended; and the absence of similar protection by any other remedy - *Liberty Group Limited and Others v Mall Space Management CC t/a Mall Space Management* (644/18) [2019] ZASCA 142; 2020 (1) SA 30 (SCA) (1 October 2019), 22.
- [47] I have already alluded to the fact that in my view the allegations in the applicant's founding affidavit, and in the applicant's supplementary affidavit, lack particularity. The applicant is vague about dates and places, and as to what exactly transpired. The respondents deny the applicant's allegations. The applicant's main gripe appears to be the incident which occurred on 27 January 2022. The respondents do go to some length to explain what occurred at the scene on the date in question.

- [48] The applicant's allegations against the second respondent and about his particular involvement in the incidents complained of, appears to me to be rather doubtful and argumentative.
- [49] Upon a proper evaluation of the affidavits, I am unable to find justification for the rejection of the respondents' version, merely on the papers - *African National Congress v Ezulweni Investments (Pty) Ltd* (Case no 979/2022) [2023] ZASCA 159 (24 November 2023), 20.
- [50] I am not persuaded that the applicant has satisfied the requirements for the grant of a final interdict against the first and second respondents on the papers.
- [51] As for the incident that occurred on 27 January 2022, I am not even convinced on the applicant's own version on the papers, that the employees of the first respondent acted unlawfully. Nothing in the respondents' version on the papers, which I am in any event unable to reject, suggests otherwise.
- [52] The application therefore stands to be dismissed.
- [53] I am left with a certain sense of unease in deciding whether I should make any order for costs in this matter.
- [54] It is rather unfortunate that the parties have become embroiled in protracted litigation. I am ultimately left with the distinct impression that neither the applicant nor the respondents were completely forthcoming in the affidavits.
- [55] As things stand, both the applicant and the first respondent are competitors in the same industry. They have the same agreement with *Firstassist*. It is inevitable that their paths will continue to cross. I do not propose to add unnecessary fuel to the fire by making an order for costs.
- [56] In the result I make the following order:

1. The respective supplementary affidavits filed by the parties are allowed, and to the extent necessary, condonation is granted for the late filing thereof;
2. The application is dismissed;
3. Each party will pay its own costs.

Y COERTZEN
ACTING JUDGE OF THE HIGH COURT
GAUTENG DIVISION, PRETORIA

Date of hearing: 19 March 2024

Date of judgment: 28 October 2024

The judgment was provided electronically by circulation to the parties' legal representatives by email and by uploading the judgment to the electronic case file on Caselines. The date and time for delivery of the judgment is deemed to be at 10h00 on 28 October 2024.

Appearances:

Counsel for the applicant: NS Nxumalo
Instructed by: Tshabalala Attorneys

Counsel for the respondents: IN Krüger
Instructed by: HJ Groenewald Inc. Attorneys