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

CASE NO: 2023-122915

1. REPORTABLE: NO

2. OF INTEREST TO OTHER JUDGES: NO

3. REVISED: YES

DATE: 13 August 2024

SIGNATURE OF JUDGE:

In the matter between:

HARMONY GOLD MINING COMPANY LIMITED

Applicant

and

CONSUMER ADVOCACY

First Respondent

ISAAC HLALELE

Second Respondent

JUDGMENT

Woodrow, AJ:

Introduction

[1] In its notice of motion, the applicant (“**Harmony**”) seeks an order in the form of a rule *nisi* calling upon the respondents to show cause on the return date why a final order ought not to be granted in the following terms:

- 1.1 The First and Second Respondents are interdicted from harassing the Applicant and its employees, through further correspondence or other forms of harassment;
- 1.2 The First and Second Respondents are interdicted from instituting legal proceedings without the leave of this Honourable Court, where the court is to be satisfied that the proceedings are not an abuse of process of the court and that there are prima facie grounds for the proceedings.
- [2] The notice of motion provides that the aforesaid orders “... *shall operate as a rule nisi with immediate effect, until the return date to be allocated by the Registrar.*” Accordingly, Harmony seeks interim interdictory relief pending the return date where it will seek final orders.
- [3] At the hearing, Harmony indicated that it did not persist with an order in terms of prayer 1.2 of its notice of motion. The aforesaid prayer is based on the Vexatious Proceedings Act, Act 3 of 1956. It is not the case of Harmony that the respondents have instituted any legal proceedings in any court.¹
- [4] Harmony persists with its claim for an interdict based on harassment. As appears later in this judgment, Harmony seeks certain expanded relief on the return date.
- [5] The respondents have opposed the present application. The respondents are not represented by an attorney of record and did not appear at the hearing of the matter.

The parties

- [6] The applicant is Harmony Gold Mining Company Ltd. Harmony owns and operates gold mining and related operations in South Africa, and employs

¹ Section 2(1)(b) of the Vexatious Proceedings Act provides: “If, on an application made by any person against whom legal proceedings have been instituted by any other person or who has reason to believe that the institution of legal proceedings against him is contemplated by any other person, the court is satisfied that the said person has persistently and without any reasonable ground instituted legal proceedings in any court or in any inferior court, whether against the same person or against different persons, the court may, ...”. (my emphasis) Section 2(1)(b) was enacted to end persistent and ungrounded litigation in the courts.

more than 43 000 employees, including contractors, in its mining operations in South Africa.

- [7] The deponent to the affidavits of Harmony is Mr David Thatcher (**“Mr Thatcher”**) who is employed by Harmony as the head of employee relations. Mr Thatcher was a recipient of the majority of the respondents’ correspondence directed to Harmony.
- [8] The first respondent is ‘Consumer Advocacy’ cited as *“an unincorporated association, with registration number 0[...] and address at Room 2[...], 2nd Floor, Golden Heights, 6[...] B[...] Street, Welkom ...”* (**“Consumer Advocacy”**).
- [9] The second respondent is Mr Isaac Hlalele, who is cited in his personal capacity and as the representative of Consumer Advocacy (**“Mr Hlalele”**).

Background

- [10] Mr Hlalele in his personal capacity, and purporting to act on behalf of Consumer Advocacy, has bombarded Harmony with correspondence from November 2022 in relation to *inter alia* alleged claims for compensation for previous employees of Harmony.
- [11] Mr Hlalele does not claim or appear to be an attorney. In various of his many letters, he states words to the following effect: *“We act on behalf of the claimant in terms of section 78 of CPA Act No 68 of 2008, which is together with Popi Act No 4 of 2013, and in tandem with section 38 of the Constitution based on the Bill of Rights.”*²
- [12] In the letters, Mr Hlalele claims to represent previous employees of Harmony, and at times their families/beneficiaries, and makes demands for

² The reliance of the respondents of the aforesaid Acts is misplaced. The previous employees who the respondents allege that they represent are not ‘consumers’ as defined in the Consumer Protection Act, Act 68 of 2008 (the **“CPA”**). There is further no indication that ‘Consumer Advocacy’ is registered in terms of section 78 of the CPA as an ‘accredited consumer protection group’. It is unclear on what section of the Protection of Personal Information Act, Act 4 of 2013 (**“POPI”**), the respondents rely upon. POPI does not afford the respondents with authority to act on behalf of the alleged claimants. Section 38 of the Constitution affords those listed in (a) to (e) thereof *“... the right to approach a competent court ...”*. There is no indication that the respondents comply with section 38 of the Constitution.

payment of millions of rands purporting to act on behalf of such claimants.

[13] In each instance, the letter is written by Mr Hlalele on the letterhead of 'Consumer Advocacy'. It is recorded below Mr Hlalele's name at the end of the letters that he was the presiding officer of the "*Fs Consumer Affairs Court*" from 2010 to 2016.

[14] The volume of correspondence directed to Harmony is extensive and I do not intend to deal with each and every letter and document which is attached to the affidavits filed on behalf of Harmony and dealt with in the affidavits. However, the following is evident:

- a. The respondents have repeatedly directed letters to Harmony and its senior employees for over a year. The letter writing is extensive and persistent.
- b. Certain parts of such correspondence are derogatory and inflammatory – for example referring *inter alia* to Harmony's "... dominant agenda was based on: Discriminatory prerogative discretion of monetary compensation in favour of white employees and exempted black employees..." and "... Harmony's discriminatory discretion policies...". (DT9); "Furthermore, it is known that [Harmony] Ltd is treating black mineworkers inferior compare their while mineworkers who are treated in a superior manners / ways, evidence is based on the monetary compensation benefits..." (DT22); the collective agreements concluded with trade unions "... are designed to discriminate and exploit these black mineworkers proletarians by hooks and crooks spearheaded by sell-outs black officials in the mining industries, camouflaged as Union representatives." (DT37).
- c. The respondents have not simply directed letters to Mr Thatcher, but at times to the chief executive officer of Harmony and the chief operating officer (operations) of Harmony.
- d. Despite explaining to the respondents why the claims made are without merit, the respondents have continued with their incessant

letter writing and demands.

- e. The letters are aimed at extricating payment from Harmony that Harmony denies is due.
- f. Despite the launch of the present application, the respondents have persisted with their ongoing letter writing and demands.
- g. The respondents have further harassed and threatened the applicant's attorney after the applicant launched the application.

[15] Notwithstanding several invitations extended by the attorneys for Harmony and by Harmony to Mr Hlalele to meet, to date Mr Hlalele has not met with them. Harmony and its attorneys have sought to engage with the respondents to address the purported claims and have explained in some detail to the respondents why their claims are without merit, but to no avail. Instead, Mr Hlalele persists with further correspondence to the senior management of Harmony and to its attorney.

[16] To date, none of the claimants that the respondents purport to represent, nor the respondents, have instituted action against Harmony.

[17] Despite Harmony's efforts to engage reasonably with Mr Hlalele, he has continued to harass Harmony over a period of a year, making numerous derogatory and inflammatory allegations in the barrage of correspondence sent to Harmony and its attorneys.

[18] Harmony states that the repeated harassment of Mr Thatcher as well as the executive members of Harmony has interfered with the Harmony's right to trade without interference from others and without harassment of its employees.

Harassment

[19] Harmony is not entitled to an order from this court in terms of the Protection from Harassment Act, Act 17 of 2011, by virtue *inter alia* of the definition of

'court' in the Harassment Act.³ However, in my view, this does not prevent Harmony from applying for the relief that it seeks herein based on the common law.⁴

- [20] Harmony has the right to carry out its business without unlawful interference from others. (**Sage Holdings Ltd and Another v Financial Mail (Pty) Ltd** 1991 (2) SA 117 WLD at 131G.) Harmony, its employees and its representatives have the right not to be harassed.
- [21] The respondents have breached Harmony's rights through the bombardment of Harmony and its senior employees with unfounded complaints and inflammatory correspondence over an extended period of time. Such conduct persists.
- [22] The bald allegation on the part of the respondents that "... *there are no supporting evidences based on the version of the dispute nor elements of harassment and violence supported by SAPS statements and Doctor's J88, which is contrary with Law of Evidence.*" does not sustain a defence.
- [23] In my view, the ongoing persistent correspondence from the respondents in the circumstances of this matter constitutes harassment, and is wrongful, entitling Harmony to the interim interdict sought. (*cf.* **Dimension Data (Pty) Ltd v Pearton** (2388/2020) [2021] ZAECPHC 54 (5 October 2021) at par [80] - [91]) The trite requisites for an interim interdict have been satisfied.
- [24] The respondents have raised the issue of the jurisdiction of this court by means of a 'special plea' (01-335), asserting *inter alia* that "... *the Respondent resides within the area of jurisdiction of Free State Province in town of Welkom ... and the Respondent's Court is based in Bloemfontein - Free State Province is Free State Local Division in Bloemfontein High Court.*"
- [25] Harmony submits that this court has jurisdiction as the cause of action arose

³ 'court' means any magistrate's court for a district referred to in the Magistrates' Courts Act, 1944 (Act 32 of 1944);

⁴ In my view, Harmony would not be entitled to rely on the Harassment Act and to bring proceedings in the Harassment Court. 'Complainant' is defined in the Act as: "**'complainant'** means any person who alleges that he or she is being subjected to harassment;" (my emphasis). A natural person is contemplated by the Act. Harmony is a juristic person.

within this court's jurisdiction.

[26] Section 21(1) of the Superior Courts Act, Act 10 of 2013, provides that a Division of the High Court has jurisdiction over "*all persons residing or being in, and in relation to all causes arising ... within its area of jurisdiction.*"

[27] If the requirements for the grant of an interdict are satisfied by facts within the territorial jurisdiction of a High Court, the court will possess jurisdiction to decide the matter. (**Zokufa v Compuscan (Credit Bureau)** 2011 (1) SA 272 (ECM) at par [61]).

[28] In the present matter the requirements for the grant of an interdict are satisfied by facts within the territorial jurisdiction of this court, including *inter alia* that:

- a. Harmony received the respondents' correspondence and threats at its head office in Randfontein, within this court's jurisdiction.
- b. The breach of the applicant's right to conduct its business without interference and without harassment of its employees occurred on receipt of the barrage of correspondence at its head office.
- c. Harm or the reasonable apprehension of harm was suffered by the applicant's senior employees at its head office.

[29] The court has jurisdiction. (see also: **Levi and another v Bankitny and another** 2023 JDR 2167 (WCC) at par [34] – [58]).

[30] Harmony submits that the harassment complained of has extended to harassment of its attorney of record. Counsel for Harmony referred me to the matter of **Deneys Reitz v South African Commercial, Catering and Allied Workers Union** 1991 (2) SA 685 (W) at 691 D, where the court held as follows:

That is true also in respect of the position of an attorney. Practising as an attorney involves more than the exercise of a right to act unhindered in regard to vocation. It implies duties. Inter alia there is

a duty, subject to exception, to render optimum service to whoever seeks assistance, to the best of the attorney's ability, within the limits of fairness and integrity. The norms prevailing in a democratic country which cares for justice in the administration of the law require that attorneys should not, because of assisting an unpopular client or advancing an unpopular cause of a client, be subjected to censure to an extent which may tend to affect adversely or inhibit the willingness to be available.

[31] The evidence on record does indicate that after the filing of the application, the respondents have written to the attorney of record of Harmony and *inter alia* threatened to report her to the LPC should she not withdraw the application.

[32] In order to ensure a fair process for the parties in the furtherance of this matter until the final determination thereof, I intend to include orders that ensure that both the applicant and the respondents are able to present their cases fully and fairly. This is reflected in the order that I intend to issue.

ORDER

[33] Accordingly, I make the following order:

1. The applicant is granted leave to supplement its founding affidavit and to deliver such supplementary founding affidavit within 15 days of this order in order to set out such facts as it wishes to regarding the alleged harassment of its attorney of record.
2. The first and second respondents are called upon to show cause, on a date to be arranged with the Registrar, why a final order should not be granted in favour of the applicant in the following terms:
 - 2.1. The first and second respondents are interdicted from directing harassing communication, in any form, to the attorney of record of the applicant;
3. A rule *nisi* is issued, calling upon the first and second respondents to

appear before the above Honourable Court, on a date to be arranged with the Registrar, in order to show cause why a final order should not be granted in favour of the applicant in the following terms:

- 3.1. The first and second respondents are interdicted from directing harassing communication, in any form, to the applicant and its employees;
4. The order set out in paragraph 3.1 hereof shall operate as an interim interdict pending the return date to be allocated by the Registrar and the adjudication of the final relief sought on the return date.
5. Directing any respondent seeking to oppose the final relief to:
 - 5.1. file their notice of intention to oppose within 5 (five) days of service of the supplementary founding affidavit referred to in paragraph 1 hereof;
 - 5.2. file their answering affidavit within 15 (fifteen) days of service of their notice of intention to oppose.
6. The costs of the application to date shall be costs in the application.

WOODROW AJ
ACTING JUDGE OF THE HIGH COURT

This Judgment was handed down electronically by circulation to the parties and or parties' representatives by e-mail and by being uploaded to CaseLines. The date and time for the hand down is deemed to be 10h00 on the 14TH day of August 2024.

Appearances

Counsel for the Applicant: J Potter
instructed by: Beech Veltman Incorporated

No appearance for the First and Second Respondents

Date of Hearing: 6 August 2024

Date of Judgment: 13 August 2024