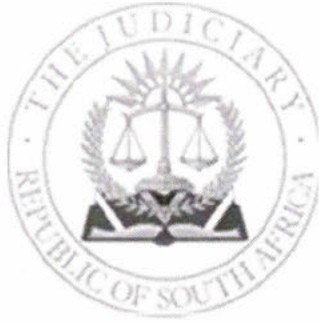
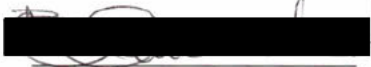




IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA

(1)	REPORTABLE: NO
(2)	OF INTEREST TO OTHER JUDGES: NO
(3)	REVISED: YES
<u>26 February 2025</u> DATE	 SIGNATURE

Case No. 145565 / 2024

In the matter between:

THAMANI MOBILE (PTY) LTD

APPLICANT

and

F CASEY & ASSOCIATES (PTY) LTD

FIRST RESPONDENT

DATA WALLET (PTY) LTD

SECOND RESPONDENT

SULIWARE (PTY) LTD

THIRD RESPONDENT

JUDGMENT

[1] This application was set down in the urgent court of 18 February 2025. Although I am of the view that the application is not urgent, it is appropriate that another court not be burdened with its adjudication at a later date as, in my view, the application falls to be dismissed for the reasons set out herein.

[2] The main relief sought by the applicant (Thamani) is the following:

- a) that the first respondent (Casey) be ordered to make payment of all amounts collected from the City of Tshwane (CoT) and City of Ekurhuleni within 24 hours of this order, in accordance with Schedule A;
- b) that Casey be ordered to process new contracts concluded between the applicant and individual employees and collect the payments from the payroll and pay over to the applicant;
- c) attorney and client costs.

[3] When Thamani launched this application on 10 December 2024¹, it gave Casey 24 hours to file an answering affidavit, so pressing was the alleged urgency.

[4] However, it failed to join two essential parties to the application: they are Data Wallet (Pty) Ltd and Suliware (Pty) Ltd (collectively called NuMobile). NuMobile has a direct interest in the outcome of this application by virtue of a successful application launched by it against Thamani under case no 090086/24 – I will deal with this in due course.

¹ And set it down for hearing on 17 December 2024.

[5] NuMobile sought leave to intervene in this application which was successful, and on 17 December 2024 Basson J granted them leave to intervene in the main application² and file an answering affidavit. These affidavits are dated 12 January 2025. The replying affidavit is dated 28 January 2025. The Notice of Set Down on the Urgent Court Roll of 18 February 2025, is dated 5 February 2025.

[6] Thus, by the time the application was enrolled, some two months had passed since its launch and any possible urgency had dissipated.

[7] In my view, this application was launched to steal the march on the relief granted to NuMobile by Teffo J on 25 October 2024 and the pending action proceeding instituted subsequently by NuMobile. She granted an interim interdict against Thamani pending finalisation of an action to be instituted within 30 days. Thamani filed an application for leave to appeal that order – it is set down for hearing in May 2025. A section 18(3) application by NuMobile was heard by Labuschagne AJ. He:

- a) found that the interdict granted by Teffo J, although interim in nature, was final in effect. He found that the application for leave to appeal therefore suspended the order in terms of s18(1) of the Superior Courts Act 10 of 2013 (the Act);
- b) refused NuMobile's application in terms of s18(3) of the Act.

[8] Thus, at date of hearing of this application, the order of Teffo J is suspended pending the outcome of the appeal procedures prescribed in the Act and Uniform Rules (the Rules).

² As second and third respondents

[9] The result of this, argues Thamani, is that there is no operative order, the status quo ante of the parties is restored and there is no bar to the court granting the relief sought. Given the facts of both applications and the pending action, the submission is astounding.

Background

[10] Until April 2022 Thamani ran a business whereby it provided smartphone contracts to employees of employers in the public sector eg municipalities who are represented by the South African Municipal Workers' Union (SAMWU).³

[11] NuMobile provides the same service but to employees in the private sector.

[12] Both Thamani and NuMobile supply hardware (mobile phones, laptops and tablets) as well as airtime and data contracts⁴, to the employees at competitive rates (ie cheaper than at the retail cost).

[13] Employees sign a smartphone contract which includes authorisation for a deduction to be processed by each employer from the employee's monthly salary. These contracts generally run for 24 months and are renewed when the contract expires.

[14] The salary deductions are collated by the employers and paid over to a collection agency – in this case Casey – who then pays the funds over to either Thamani or NuMobile (ie the service providers) as the case may be.

³ Who Thamani has also failed to join in these proceedings

⁴ From MTN and Vodacom

[15] Thamani ran its business with the approval of SAMWU who assisted in the facilitation of the deals for their public sector employees. In fact, Casey states that it operates upon the authorisation of SAMWU.

[16] During 2021, Thamani's director (Mashele) approached NuMobile for assistance as it was experiencing cash flow constraints. In April 2022 Thamani sold its assets and ceded its contracts to Data Wallet⁵. Thamani then became essentially dormant.⁶

[17] Mashele was then employed by Data Wallet and was paid a salary until his resignation in July 2024. His job was to sell contracts to the public sector users and manage the relationship Thamani had built up with them. Mashele was the "face" of the business and NuMobile alleges that he had the business relationship with SAMWU and Casey. None of this is contentious.

[18] It is also common cause that, until July 2024, payments from Casey were made to Data Wallet each month⁷ in respect of not only the contracts ceded to NuWallet by Thamani in April 2022, but the renewed contracts that Thamani's original customers had with NuWallet upon expiry of the 24-month contract with Thamani.

[19] The undisputed facts are that, once Casey pays over the monies received from the employers, NuWallet then pays MTN and Vodacom as well as the suppliers of the hardware (ie the cellphones, laptops and tablets).

[20] There is no dispute that the arrangement between Thamani and NuMobile ran smoothly until July 2024 when Mashele resigned from Data Wallets's employ and went back to running Thamani (which had been dormant for over two years). He alleges

⁵ Second Respondent

⁶ Which was conceded in argument.

⁷ Per paragraphs 13 to 15 supra

that Data Mobile failed to comply with their written agreement but this is disputed by Data Wallet. The actual dispute is not relevant to the adjudication of this application and therefore nothing more need be said in respect thereof.

[21] Suffice it to say that the present issue arose during July 2024 when Mashele issued an unauthorised written instruction⁸ to Casey to change the bank details for payment of the monthly salary deductions from Data Wallet to Thamani. Casey complied with this instruction.

[22] As soon as NuMobile realised what had happened it launched the urgent application under case number 090086/2024 that was heard by Teffo J on 28 August 2024.

[23] The order granted on 24 October 2024 by Teffo J reads as follows:

- "2. That this order hereby serves as an interim order with immediate effect pending the finalisation of an action to be instituted within 30 days from the date of granting this order.
3. That the first and second respondents hereby, jointly and severally, be prohibited from interfering with the applicants' business activities in any manner whatsoever, including but not limited to:
 - 1.1 Be prohibited from giving any instruction to the third or fourth respondent or any other client of the applicants to change, vary or amend the applicants' banking particulars;
 - 1.2 Be prohibited from diverting and/or misappropriating any funds payable to the applicants from the following clients:
 - 1.2.1 Ekurhuleni Municipality;
 - 1.2.2 Tshwane Municipality;

⁸ ie without NuWallet's knowledge/consent

- 1.2.3 Mogale City Municipality;
 - 1.2.4 City of Johannesburg COJ Core – SAMWU;
 - 1.2.5 Johannesburg Water – SAMWU;
 - 1.2.6 Emfuleni Municipality;
 - 1.2.7 Rand West Municipality – RWC; and
 - 1.2.8 Sefako Makgatho Science University (MEDUNSA).
- 1.3 Be prohibited from holding out or representing that the first and/or second respondents are the applicants or the applicants' duly authorised representatives;
 - 1.4 Be prohibited from representing to the applicants' clients including but not limited to those mentioned in this order, that the applicants' business is that of the first and second respondents;
 - 1.5 Be prohibited to induce, procure or solicit payments from the applicants' clients, including but not limited to those listed in this order, to make payment payable to the applicants to the first and/or second respondents.
- 4. That the third and fourth respondents is hereby prohibited from making any payments to the first and/or second respondents or their nominees for payments received from the applicants' clients listed in this order.
 - 6. That the third respondent be hereby prohibited from taking accepting or implementing any instruction received from the first and/or second respondents or their nominees, relating to the collection of the funds due and payable to the applicants in respect of the clients listed in this order.
 - 7. The first, second and third respondents are hereby ordered to pay the cost of this application, jointly and severally, the one paying the other to be absolved including the costs of two counsel where so employed on Scale C."

- [24] NuWallet argues that, given that the entirety of the dispute was before Teffo J, and given the relief sought by Thamani in this application, it would have been appropriate for Thamani to have launched a counter-application – it did not.
- [25] Thamani was also aware at the launch of this application that Casey was caught squarely in the middle of the dispute between it and NuMobile, and yet it chose not to join NuMobile to this application.
- [26] Lastly, given the correspondence that flowed between the parties as at date of this application Thamani was well aware of the disputes.
- [27] On 19 November 2024 and under case number 134581/2024 NuWallet launched the directed action against Thamani: Mashele and Casey are second and third defendants respectively in that action. Amongst the relief sought is that:
- a) Thamani and Mashele be prohibited from interfering with NuWallet's business activities including that they be prohibited from diverting / misappropriating funds payable to NuWallet by, inter alia, Ekurhuleni and Tshwane Municipalities;
 - b) they pay to NuWallet an amount of R5 022 962-87 in respect of the months of July, August, September and October 2024 which were not paid to plaintiff; and
 - c) damages in the amount of R4 million.

[28] This is important as in the application in casu, Thamani seeks an order directing Casey to pay to it an amount of R3 178 699-40 that Casey collected from CoT and Ekurhuleni for the months of October and November 2024.

[29] Given that both the application before Teffo J and the action deal with this very issue it is, in my view, clear that to grant the relief pre-empts the decision on issues that are in dispute and fall to be decided in the instituted action: ie the liability of these parties towards each other, the causa for that liability, whether the April 2022 contract was validly terminated, whether Thamani is entitled to payment and, if so, in what amount.

[30] In my view:

- a) Thamani waited two months to finalise this application in circumstances where the original grounds of urgency were that it will be unable to obtain substantial redress in due course; and
- b) that “the continued recalcitrance of Casey.... means utter ruin of the applicant’s business.”

[31] But, as stated, Thamani has dragged its heels for two months. Added to this is the common cause fact that Thamani was dormant until July 2024 and that the change of banking details was made by Mashele without NuWallet’s knowledge or consent. Furthermore, there is both an application and an action pending before this court between the same parties, and based on the same facts and the same cause of action. Thus, the dispute is already before court. NuWallet’s point of *lis pendens*⁹ must be upheld.

⁹ Nestle (South Africa) (Pty) Ltd v Mars Inc 2001 (4) SA 542 (SCA) par 16

[32] Given this, the application is both not urgent and stillborn.

Costs

[33] In my view, given all the above, this application should be dismissed with costs to be taxed in accordance with Scale C given the complexity of the issues.

Order

1. The application is dismissed.
2. The applicant is ordered to pay the costs of the first, second and third respondents to be taxed in accordance with Scale C.


B NEUKIRCHER
JUDGE OF THE HIGH COURT
GAUTENG DIVISION, PRETORIA

This judgment was prepared and authored by the judge whose name is reflected, and is handed down electronically by circulation to the parties/their legal representatives by email and by uploading it to the electronic file of this matter on CaseLines. The date for hand-down is deemed to be 26 February 2025

For the applicant	:	Adv Prinsloo
Instructed by	:	Friedland Hart Solomon & Nicholson
For the first respondent	:	Adv Pendani
For the second and third respondent	:	Mr Sachs
Instructed by	:	Bagraim Sachs Inc. Attorneys
Matter heard on	:	19 February 2025
Judgment date	:	26 February 2025