



IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA

Case number: 17916/2022

DELETE WHICHEVER IS NOT APPLICABLE	
(1) REPORTABLE: YES/NO	NO
(2) OF INTEREST TO OTHERS JUDGES: YES/NO	NO
(3) REVISED	YES
11/3/2025	[REDACTED]
DATE	SIGNATURE

In the matter of:

ANTHONY KILROY BEAMISH

Applicant

and

MS VAN DER MERWE

Respondent

JUDGMENT

DE BEER AJ

Introduction

1. The applicant has approached this court seeking an order declaring the respondent a vexatious litigant in terms of the Vexatious Proceedings Act, 3 of 1956 (*"the Act"*).

2. The respondent opposes this application on the basis that the applicant has not satisfied the legal requirements necessary to warrant such a declaration.

Legal Framework and Requirements

3. Section 2(1)(b) of the Act empowers the court to prohibit a litigant from instituting legal proceedings without prior leave of the court if it is satisfied that the litigant, i.e., the respondent *in casu*, has persistently and without reasonable ground instituted legal proceedings.
4. The applicant needs to establish the following elements:
 - 4.1. That the respondent has instituted legal proceedings persistently;
 - 4.2. Such proceedings were instituted without reasonable grounds; and
 - 4.3. That the applicant is entitled to final relief on the papers in front of court.
5. The applicant must show a pattern of repeated litigation rather than isolated incidents.
6. In *Bissett and Others v Boland Bank Ltd and Another*,¹ the court emphasised that vexatious litigation had to appear as a certainty, not merely on a preponderance of probabilities.
7. The fact that a litigant has been unsuccessful in previous matters does not automatically render their litigation vexatious.

¹ 1991 (4) SA 603 (D).

8. Abuse of process has to be determined by the circumstances of each case. In general terms, an abuse takes place when procedures permitted to facilitate the pursuit of the truth are used for purposes extraneous to that object.²

The Parties' Respective Contentions

9. The applicant contends that the respondent has a history of initiating multiple proceedings on substantially the same grounds and that such conduct indicates vexatious litigation in terms of the Act.
10. The respondent denies that their litigation history meets the threshold for being declared vexatious and contends that the applicant has failed to show that the respondent's proceedings were unreasonable.

Common Cause Facts And Relevant Chronology

11. The respondent alleged that the applicant sexually assaulted her at her mother's home, where she resided, on 31 May 2019, which assault the applicant denies.
12. The respondent deposed to an affidavit on 16 December 2019 wherein details of the alleged assault were provided, and on 17 December 2019, the respondent instituted an application in the Tshwane Central Magistrate's Court against the applicant for a protection order in terms of the Protection from Harassment Act, 17 of 2011 and thereafter laid a criminal complaint at Wierda Brug Police Station on 19 December 2019.

² Beinash v Wixley 1997 (3) SA 721 (SCA).

13. On 28 January 2020, the National Prosecuting Authority (*“the NPA”*) issued a *nolle prosequi* certificate in respect of the respondent’s criminal complaint.
14. The parties concluded a settlement agreement on 14 August 2020.³ One of the terms thereof was that the respondent withdrew the harassment application. This agreement confirmed that the respondent *“is presently residing with her mother”*, as was the case in 2019.
15. On 23 June 2021, subsequent to the certificate (*nolle prosequi*), the respondent instituted a private prosecution against the applicant in respect of the alleged sexual assault. On 28 July 2021, the respondent instituted a further application for a protection order under the Harassment Act. On 21 October 2021, the respondent withdrew the harassment application, and on 3 December 2021 withdrew the private prosecution.
16. The erstwhile application for private prosecution was met by the applicant’s application for security of costs in the amount of R2.5 million.⁴
17. No further proceedings have been instituted by the respondent against the applicant since the above withdrawals.
18. However, the applicant has instituted a damages action against the respondent and her legal representatives for damages in the amount of R3.0 million, which is still pending. Another seemingly related action has been instituted against *“Brad Strydom”*.⁵

³ CaseLines 001-48 to 001-49.

⁴ CaseLines 001-80 to 001-81: Notice of motion.

⁵ CaseLines 001-15.

19. The applicant also instituted a complaint against the respondent with the Legal Practice Council (*"LPC"*), a candidate attorney at the time. The court was informed from the bar that the LPC complaint had been dealt with and that the respondent was admitted as a legal practitioner on 20 January 2025.
20. The current application was instituted in 2022 and ultimately served during 2023. Applicant's counsel submitted that the delay was due to the respondent's attempt to avoid service. This aspect should be considered in the context of the factual timeline and chronology detailed above.
21. The timeline suggests that a substantial period has elapsed from the respondent's withdrawal of proceedings until the institution of this application. During this time, no further proceedings have been instituted.
22. Prior to the institution of this application, as detailed in the founding affidavit, a second settlement was *"offered"* on the same terms as the previous agreement. The applicant was *"disinclined to accept the offer"*. The purpose of the second settlement was to *"withdraw all litigation and go our separate ways"*.⁶
23. Further allegations contained in the respective affidavits of the parties refer to various irrelevant aspects and individuals. At best, these unconfirmed allegations are intended to create atmosphere.
24. Both parties have elevated their personal issues onto social media platforms and continued to advance their campaigns and claims in various courts, which is regrettable.

⁶ CaseLines 001-22, founding affidavit, paragraphs 55 and 56.

25. The applicant refers to the respondent's psychiatric treatment posted on Twitter under the rubric of being "*public record*".⁷
26. On a conspectus of all the evidence and common cause facts, the applicant must prove its case for final relief, essentially that the respondent has persistently, without reasonable grounds, instituted legal proceedings. As dealt with above, there are no current legal proceedings or live controversies instituted by the respondent against the applicant. Conversely, the action instituted by the applicant against the respondent has not been finalised.
27. Also, as to the allegation of sexual assault, the applicant criticises the respondent's version based on the timing thereof, i.e., that it occurred on 31 May 2019 but was only prosecuted on 17 December 2019 and mentioned for the first time in an affidavit the previous day. The second criticism is that the alleged sexual assault was not detailed at the outset but in later paragraphs. Save for the criticism, the applicant seemingly fails to elaborate on aspects during May/June 2019, leaving "*it to the reader to infer*".⁸
28. What seems to be common cause is that the parties shared space and time during 2019. The applicant was involved in a relationship with the respondent's mother, whom he visited regularly at the residence where the alleged sexual assault occurred; the respondent resided with her mother during the period. The settlement agreement signed by both parties confirms this. The consequences and after-effects of what may or may not have occurred during 2019 culminated in the various actions and processes detailed in the papers. Another alleged domestic incident at the same residence where the alleged

⁷ CaseLines 001-20 to 001-21 and 001-23.

⁸ CaseLines 001-13.

sexual assault took place involved the applicant, the respondent, the respondent's mother and the brother.

29. The proverbial he said, she said is a common thread and theme in the papers. What is, however, relevant, if not inescapable, is the “**CONCLUSION AND RECOMMENDATION**” by the NPA as recorded in the papers and attached by the applicant to the founding affidavit. For ease of reference, the following statement by the NPA is quoted *verbatim*:

“Her (the respondent’s) story could be true but it is her word against that of the accused and her mother will not corroborate her story because of all the conflict between them.”

30. The mere fact that the NPA considered that the respondent’s allegations of sexual assault “*could be true*” makes inroads into the applicant’s contention that proceedings subsequent to 2019 were instituted without reasonable grounds.
31. Although the NPA indicated that there is no reasonable prospect of a successful prosecution based on the evidence, it referred to a criminal prosecution, which carries a more onerous burden of proof than in civil litigation.
32. Based on the above, it should be assessed whether the respondent’s conduct pertaining to previously instituted but withdrawn processes was instituted without reasonable grounds.

33. The legal position pertaining to the efficient conduct of litigation by way of affidavits has been established.⁹ In the Venmop matter, the court enunciated the important principle that the conduct and finalisation of litigation in a speedy and cost-efficient manner should be a collaborative effort and is essential. The role of witnesses is to testify to relevant facts of which they have personal knowledge. The role of legal representatives has two key aspects. First is the supervision, organisation and representation of evidence of the witnesses and secondly, the formulation and presentation of argument in support of a litigant's case. The diligent observation of those roles facilitates the role of the judicial officer, which is to arrive at the reason for determining the issues in dispute, in favour of one or the other of the parties. Where practitioners neglect their roles, it leads to the protracted conduct of litigation in an ill-disciplined manner, the introduction of inadmissible evidence and the confusion of fact and argument, with the attendant increase and cost and delay in its finalisation, inimical to both expedition and economy. I will return to this aspect hereunder when the aspect of costs is addressed.

Application Of The Law To The Facts

34. The applicant contends that the institution and withdrawal of processes detailed above occurred without reasonable grounds. The respondent contends the converse. Based on the withdrawals and that no further processes were instituted thereafter, the court finds no basis for the persistency argument. The withdrawals negate a converse inference or

⁹ Venmop 275 (Pty) Ltd and Another v Cleverland Projects (Pty) and Another (2014/14286) 2016 (1) SA 78 (GJ).

finding, considered together with the two attempts to settle the matter to end all litigation.

35. Applicant's counsel submitted that the answering affidavit was void of particularity and did not address relevant serious issues and that the contents should be regarded as avoiding the same, that the court should attach no weight thereto and due to the fact that "*positive evidence*" was not provided or issues not explained, the court should reject the respondent's version.
36. As contained in the heads of argument prepared on behalf of the applicant, the applicant's counsel further submitted that the Mineral Sands Resource matter¹⁰ duly applied to the facts *in casu*, indicates that the motive of the various proceedings was "*to punish and silence the press*". I debated the applicability of the Mineral Sands judgment with the applicant's counsel. The Mineral Sands matter does not find application *in casu*, nor does it support the applicant's contention. The applicant was not silenced. The judgment refers to the fact that a party can use court processes and associated legal costs as a means to an impermissible end, likely to cause appreciable damage to fundamental rights.¹¹
37. Various courts have appositely pronounced upon the principle that whatever may have been the attitude of litigation in former times, it is not in keeping with modern ideas to view it as a game. The object should be just adjudication, achieved as efficiently and inexpensively as reasonably possible. Private

¹⁰ Mineral Sands Resources (Pty) Ltd and Others v Reddell and Others [2022] [2] ZACC 37.

¹¹ Mineral Sands *supra* at [94].

funds and stretched judicial resources should only be expended on genuine issues.¹²

38. The current application is not an example of utilising judicial resources for genuine issues or purposes. Both parties used court processes as a means to their personal end, which is regrettable. The papers are littered with such examples and a clear testament thereof.
39. It is not, however, indicative of the fact that the court should reject the respondent's version as untenable or far-fetched.
40. The basic principle in motion proceedings is that the affidavits define the issues between the parties and the affidavits embody evidence. An applicant who seeks relief from a court must make out a case in its notice of motion and founding affidavit.¹³
41. In *Betlane v Shelly Court CC*,¹⁴ the Constitutional Court stated that it is trite that an applicant ought to stand and fall by its notice of motion and the averments made in its founding affidavit.
42. In *National Council of Societies for the Prevention of Cruelty to Animals v Open Shore*,¹⁵ the SCA referred with approval to *Shakot Investments (Pty) Ltd v Town Council of Borough of Stanger*¹⁶ where Muller J said: "*In proceedings by*

¹² *Bee v the Road Accident Fund* 2018 (4) SA 366 (SCA) at [67].

¹³ *Molusi and Others v Voges N.O. and Others* 2016 (3) SA 370 (CC) at [27].

¹⁴ 2011 (1) SA 388 (CC) at 2; see also *Brayton Carlswald (Pty) Ltd and Another v Brews* 2017 (5) SA 498 (SCA) at [29].

¹⁵ 2008 (5) SA 339 (SCA) at [29] to [30].

¹⁶ 1976 (2) SA 701 (D) at 704F-G.

way of motion the party seeking relief ought in his founding affidavit to disclose such fact as would, if true, justified the relief sought ...”.

43. Because motion proceedings are concerned with the resolution of legal issues based on common cause facts, where there are disputes of fact in proceedings in which final relief is sought, those disputes are to be determined in accordance with the Plascon Evans rule.¹⁷
44. The accepted approach to deciding factual disputes in motion proceedings requires that subject to “robust” elimination of denials and “fictitious” disputes, the court must decide the matter on the facts stated by the respondent, together with those the applicant avers, and the respondent does not deny. On the accepted test for fact-finding in motion proceedings, where disputes of fact arise, it is the respondent’s version that will prevail.¹⁸
45. For the reasons detailed above, the court does not reject the respondent’s version. In the premises, the applicant is not entitled to final relief sought in the notice of motion in terms of the Act.

Conclusion and Costs

46. The applicant has failed to discharge the onus of proving that the respondent’s conduct meets the stringent requirements of the Act. A declaration under the Act is an extreme measure and should be used sparingly.¹⁹ Accordingly, the application stands to be dismissed with costs.

¹⁷ National Director of Public Prosecutions v Zuma 2009 (1) SA 277 (SCA) at [26].

¹⁸ Plascon Evans Paints Limited v Van Riebeeck Paints (Pty) Ltd 1984 (3) SA 623 (A) at p634E - 635J; Fakie N.O. v CCII Systems (Pty) Ltd 2006 (4) SA 326 (SCA) at [63] to [64]; Snyders v De Jager and Others 2017 (3) SA 545 (CC) at 565, [71].

¹⁹ Beinash v Wixley, *supra*.

47. Both parties sought punitive costs. For the reasons detailed above, proceedings of this nature and the manner in which this application was prosecuted are regrettable. Granting punitive costs in favour of any of the parties may, in future, encourage processes of this nature; these processes and similar conduct by the parties should be discouraged. The court is not convinced that any of the parties made out a case for punitive costs, and such an order will not follow.
48. However, not being inclined to grant punitive costs, there is no reason the court should deviate from the normal position as to costs, i.e., costs should follow the event. The respondent's counsel submitted that the court should grant costs occasioned by the appointment of senior counsel. The respondent protected her constitutional right of access to court. This right justifies the appointment of senior counsel.
49. The applicable scale of costs to follow in terms of Uniform Rule 67A, which would adequately compensate the respondent in all of the circumstances in the present application, is, in my view and the exercise of my discretion, Scale C, including the costs occasioned by the appointment of senior counsel.

Order

50. For the reasons detailed above, the court grants the following order:
- 50.1. This application is dismissed with costs on Scale C in terms of Rule 67A, including the costs of senior counsel.


DE BEER AJ

Date of hearing: 5 March 2025

Judgment delivered/Uploaded: 11 March 2025

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