

SOUTH AFRICA / JUDGMENT

Impangle Logistics (Pty) Ltd and Another v All Truck Drivers' Foundation (ATDF) and Others; Mbali Coal Proprietary Limited v Ntuthuko and Others (3647/2019; 3564/2019) [2019] ZAMPMHC 11; 2020 (1) SACR 536 (ML) (25 October 2019)
[2019] ZAMPMHC 11

COURT

Middelburg High Court, Mpumalanga

BEFORE

Legodi

CASE / FILE NUMBER

3647/2019; 3564/2019

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IN THE HIGH COURT OF SOUTH AFRICA

MPUMALANGA DIVISION, LOCAL SEAT

In the matter between

CASE NUMBER 3647/2019 IMPANGLE LOGISTICS (PTY) LTD LEVEL LOADS CC First Applicant
Second Applicant and ALL TRUCK DRIVERS' FOUNDATION (ATDF) AND 12 OTHERS First
Respondent And CASE NO: 3564/2019 MBALI COAL PROPRIETARY LIMITED Applicant And
BUTHELEZI NTUTHUKO +63 OTHERS Respondents

JUDGMENT

LEGODI J

- [1] The objects of the police are to prevent, combat and investigate crimes, maintain public order, protect and secure the inhabitants of the Republic, their property, to uphold and enforce the law[1] and the national public service must be structured to function in the national, provincial and where appropriate, local spheres of government[2].
- [2] This judgment is about whether the Police Service in the present two cases, namely, Impangele Logistics (PTY) Ltd and Another, v All Drivers Foundation ATDF and Others under case number 3657/2019 and Mbali (Pty) Ltd v Ntuthuko Buthelezi and Others under case number 3564/2019 complied with their constitutional obligation to prevent, combat, investigate crime, maintain public order, protect and secure the inhabitants of the Republic and their property, uphold and enforce the law, as contemplated in subsection

(3) of section 205 of the Constitution.

- [3] The two matters were laid before me on an urgent motion roll of Tuesday 10 September 2019. Having been satisfied that the applications were urgent, I granted reliefs sought. In essence the relief was to this effect: Restraining the main respondents from unlawfully damaging, obstructing, interfering in the business conducted by the applicant, Imbali Coal Mine. In respect of Impangele Logistics restraining and interdicting the respondents from impounding, detaining or obstructing in any manner whatsoever the applicants' vehicles. Furthermore, restraining the respondents from intimidating, harassing, threatening or attacking any of the applicants' employees.
- [4] The following police stations were cited in the applications as some of the respondents, namely, Ogies, Phola, Middelburg, Piet Retief, Witbank and Ermelo. In both cases the police were ordered to assist in the enforcement of the orders in particular, that no criminal activities were committed.
- [5] Several allegations were made in the founding papers suggesting that the police refused, failed and or neglected to heed to their constitutional obligation as articulated in paragraph 1 of this judgment. Almost in every urgent motion roll on Tuesdays, our courts, particularly in the Highveld are faced with urgent applications where the police are accused of failing to comply with

their constitutional imperative. Often the explanation is that the police refuse to intervene even in clear criminal activity until a court has directed them to act. That would be wrong and will encourage lawlessness.

- [6] The same allegations against the police were made in the present proceedings. It is as a result of thereof that I ordered supplementary affidavits to be filed. I have now been provided with the affidavits and I find it necessary to write a judgment dealing with the complaints made against the police.

Impangele case

- [7] In this application, it is alleged that a group of people decided to take the law into their own hands by impounding, detaining or obstructing the applicants' trucks and or vehicles. They are also alleged to have intimidated and continued to intimidate, harass, threaten and or attacked the employees of the applicants. Furthermore, the first to seventh respondents are alleged to cause or threaten to cause damage to the applicants' vehicles. The other actions complained of against the first to the seventh respondents was that they disrupted or are disrupting the applicants' transport business and trespassed on the applicants' property.
- [8] All of the above actions constitute criminal activities for which the police are obliged to prevent and protect those who happen to be victims, and their property. A photograph attached to the founding affidavit, marked as "FA3", is described in paragraph 3.1 of the supplementary affidavit deposed to on 13 September 2019. It depicts 'the first to the seventh respondents unlawfully detaining numerous trucks on the public road' and 'further

demonstrates the presence of the SAPS on the scene, but failing to procure the release of the truck’.

- [9] If this statement attributable to the conduct of the police is correct, then the police failed to execute their constitutional duty being to prevent, maintain public order, to protect and secure the inhabitants of the Republic and their property, to uphold and enforce the law as envisaged in section 205(3) of the Constitution.
- [10] The other photo, on page 47 of the paginated papers, depicts the first to the seventh respondents unlawfully detaining numerous trucks on a public road, thus causing public disorder in the face of the police officials, so is averred in the supplementary affidavit.

On page 48 of the paginated papers another picture depicts ‘trucks being unlawfully detained at the Chrome mine by the first to the seventh respondents’. These trucks are used to transport chrome from the mine to various destinations. The first to the seventh respondents simply obstructed and blocked the main entrance of the mine and thus making it impossible for the trucks to leave the mine, so is stated in the supplementary affidavit.

- [11] On page 50 of the paginated papers there is another picture. On this photograph the respondents used large rocks to blockage the R38 public road. They also burnt tyres to prevent members of the public from using the road. On page 52 of the paginated papers, the respondents are depicted hi-jacking a truck, and using the truck for purposes of blocking the public road. In a further affidavit attached to the supplementary affidavit the respondents are shown unlawfully stopping one of the applicants’ trucks, and another truck was used to block the road.
- [12] On another photograph marked SA3 taken from the cabin of one of the applicants’ trucks, a truck forced to block the road upon instructions of the respondents. Photograph SA4 is described in the supplementary affidavit as being taken within the cabin of one of the applicant’s trucks. According to the applicant from this picture it is clear that the truck is being forced to block the road upon instructions received from one of the respondents and was armed with a hand-gun, threatening and forcing one of the applicants’ drivers to block the public road.
- [13] On another picture marked SA5 to the supplementary affidavit, one of the applicants’ truck drivers who refused to accede to the respondents’ threats, was subsequently threatened and the truck was thrown at with stones and the windscreen was damaged. On photo SA6 two unknown persons hi-jacked one of the applicants’ trucks. The person seen driving the truck is not one of the applicants’ employees and the other person on the picture is armed with a hand-gun used to hi-jack the applicants’ truck.
- [14] All the actions described above, evidence clear commission of criminal activities inter alia, assault, robbery, hi-jacking, malicious damage to property, unlawful detention of vehicles, blockage of public road and inciting violence. Investigation of these allegations or acting on these allegations should have been a priority to the police.

[15] In a paragraph devoted to the failure of the police to assist the applicants and to prevent the respondents from committing acts of criminality, the following is alluded to: On 22 June 2019 the applicants as a result of the unlawful activity of the respondents

approached the SAPS for its assistance to prevent the aforesaid unlawful actions. The deponent to the supplementary affidavit Mr

Hermanus Frederich De Waal 'was advised by SAPS that' he should 'firstly procure a court order to enable the SAPS to come to the applicants' assistance'.

[16] This court is not hearing about this kind of responses by the SAPS for the first time. When matters deserving maintenance of public order by the police are reported to the police, immediate response is required. It would constitute a wanting conduct on the part of the police not to act on a criminal activity reported to them. Our courts often hear these kind of stories against our police officials particularly in this part of the Province where mining activities are very high. To seek an order of court before an action is taken on a criminal activity can only serve to bring the criminal justice system into a disrepute.

[17] It is not the responsibility of our courts to prevent, combat and or investigate crimes. Neither is it the function of the courts to maintain public order, secure the inhabitants and their property. That is a power and authority constitutionally bestowed on the police in term of section 205 of the Constitution.

[18] If what is said about the police is true, then one wonders whether it is training offered to our law enforcement officers, or is just dereliction of duties by police officials. These concerns are what prompted this court to say something in the form of a judgment for the attention of the provincial Commissioner. It is up to the Provincial Commissioner to consider whether or not to launch an investigation with a few to avoid further occurrence of this conduct

[19] Lack of swift consequences for criminal actions by whoever can only encourage people to and take the law into their own hands and sometimes in full view of the police officers as it was apparently the situation in this matter. For example, in paragraph 6.2 of the supplementary affidavit, Mr De Waal states:

"On the 15th August 2019 upon another incident, I specifically approached the eighth respondent (being Middelburg Police Station) for its assistance and the eighth respondent simply refused to even open a docket and investigate the matter".

Clearly something like this needs to be investigated to establish the veracity of the statement so as to ensure that confidence in our police services is maintained and at the same to ensure that there are consequences for any unlawful activity.

[20] On 21 August 2019 and upon the respondents having unlawfully taken no less than twelve of the applicants' trucks, Mr De Waal says he 'again approached the SAPS 'who simply refused to assist the applicants and the applicants, with great difficulty, on the 24th of August 2019, procured the release of the twelve trucks'.

- [21] If this statement is correct, then someone is just not doing his or her job. I would want to imagine that this is not something that the Provincial Commissioner will let lie low. To ensure that the record is set straight for proper compliance with the imperative in section 205 of the Constitution, it will be necessary for the Provincial Commissioner to launch an investigation into the complaints raised in these proceedings.
- [22] On the 1st of September 2019 the first to the seventh respondents again are alleged to have taken ‘twelve of the applicants’ trucks, assaulted, threatened and intimidated the applicants’ employees and blocked the public road’. Then in paragraphs 6.6 and 6.7 of his affidavit Mr De Waal stated:

“6.6 Again, despite my best endeavours to procure the assistance of the SAPS, no assistance was forthcoming and I was again advised that a court order should be obtained against the persons acting unlawfully to enable the SAPS to come to the applicants’ assistance.

6.7 On the 3rd of September 2019, and without the assistance of the SAPS, the applicants’ managed to procure release of their vehicles”.

- [23] Assuming that the statement is correct, the conduct by the main respondents is not surprising. They were allowed to take the law into their own hands on 21 August 2019 and nothing happened. So, they did it again on the 1st September 2019, still no consequences. Anything like this can only promote the commission of crimes instead of combating and or preventing such commission from happening.

In Mbali (Pty) Ltd case

- [24] What has happened in this case with reference to the conduct of the police, is no different from what has happened in Impangele Logistics case. In Mbali case, the main respondents were also interdicted and restrained from trespassing on the applicant’s property. They were interdicted from damaging mine assets, building infrastructure, equipment or vehicles. They were further interdicted from intimidating, threatening or assaulting the representatives or employees of the applicants or any contractors of the applicant, interdicted and restrained from blocking any of the mine gates, or the roads leading to or from the applicant’s mine and or restrained and interdicted from stopping, interfering with, damaging any vehicles travelling to and from the mine including any trucks transporting coal to and from the mine and or threatening the drivers thereof.
- [25] I have mentioned earlier in this judgment, that these kind of cases, particularly in the Highveld, often find their way in our courts. In almost each of these cases there is an allegation that the police are unwilling to assist. They demand on a court order before they can intervene. As I said, the reaction and attitude is wrong.

[26] It was on 21 August 2019 when the respondents and their supporters held unlawful violent protests at Mbali Coal Mine. They repeatedly blocked the gates of the mine, intimidated and threatened employees, prevented vehicles from reaching the mine and burnt tyres around the gates.

[27] On 22 August 2019 the respondents reported to the applicant's main gate, threatened to burn down the gate and the mine. Due to the above aggressive and unlawful activities by the respondents, no employees, contractors, or truck transporting coal, could access or leave the mine for the duration of the protest, which lasted approximately 9 hours' as stated by Mr Maropeng Ramoshaba, deponent to the supplementary affidavit on behalf of Mbali.

[28] In paragraph 8 of the supplementary affidavit Mr Ramoshaba inter alia, stated:

“8.1...

8.2...

8.3 It is quite clear that that the SAPS are unable or reluctant to protect the mine or to provide the personnel to do so.

8.4 It is further apparent that is insufficiently staffed and lacks the resources to carry out its duties. We are informed that the SAPS at Ogies only has two vehicles. This severely hampers the SAPSS' ability

to attend to urgent matters, such as the above mentioned protests.

8.5 Despite urgent requests for assistance, only two officers arrived at the mine on 21 and 22 August 2019, and were entirely insufficiently underequipped. They advised that the rest of the SAPS personnel were controlling unrest in Ogies.

8.6 On various occasions when the mine has been stopped by community organisations, the police have been inadequately resourced to disperse

the protestors. The police have also been unwilling to make any arrests notwithstanding the fact that the leaders of the respondent have been identified.

8.7 Consequently, it is respectfully and unfortunately necessary that the Station Commanders of the SAPS police stations involved be encouraged by the above Honourable Court to perform their duties.

8.8 The applicant has had several arrangements with the SAPS, the purpose of which was to present its concerns regarding the involvement of the SAPS when called upon. However, despite such arrangements, including a meeting with the Station Commander, the SAPS remains either, reluctant or unwilling to assist the applicant and enforce the law”.

[29] The quotation above is with reference to Ogies Police Station. I must immediately say it can never be a justification to let people to take the law in their own hands simply because there are insufficient personnel or police or that there are only two vehicles. This would not be a justification in law. Contingency arrangements in time of need, have to be put in place. I doubt if the office of the Provincial Commissioner was ever informed of these challenges set out in the quotation above.

[30] Then in paragraph 11.5 of the founding affidavit, is stated:

“Consequently, it is respectfully and unfortunately necessary that the Station Commander of the SAPS police stations involved be encouraged by the above Honourable Court to perform their duties”.

The line is blurred. One must also be mindful of separation of powers. As I said earlier in this judgment, it is for the police to ensure they do what the constitution obliges them to do. On the other hand, it is for the Provincial Commissioner to encourage his members to perform their duties and not the courts. It is for this reason that these matters have to be brought to the attention of the Provincial Commissioner.

[31] The statement with reference to the court encouraging the police to do their job, is clearly a cry for help by those who feel the police are not doing their job. Hopefully, the Provincial Commissioner will hear them. Because, it is wrong not to act on the commission of criminal activities.

[32] In conclusion an order is hereby made as follows:

32.1 The Registrar of this court is hereby directed to bring this judgment to the attention of the Mpumalanga Provincial Commissioner.

32.2 The Provincial Commissioner to consider whether to institute an inquiry and to consult with the applicants' attorneys for the purpose of fully addressing the complaints raised herein and to take measures to avoid reoccurrence of similar complaints in the future, if necessary.

M F LEGODI

JUDGE PRESIDENT OF MPUMALANGA DIVISION

DATE OF HEARING: : 10 SEPTEMBER 2019

DATE OF JUDGMENT : 25 OCTOBER 2019

CASE NO.3647/2019

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[1] Section 205(3) of the Constitution

[2] Section 205(2) of the Constitution

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