

SOUTH AFRICA / JUDGMENT

J.A.R v T.V.R (21609/2021) [2025] ZAGPJHC 59 (16 January 2025) [2025] ZAGPJHC 59

COURT

South Gauteng High Court, Johannesburg

BEFORE

Fisher

CASE / FILE NUMBER

21609/2021

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REPUBLIC

OF SOUTH AFRICA

IN

THE HIGH COURT OF SOUTH AFRICA

GAUTENG

LOCAL DIVISION, JOHANNESBURG

Case

Number: 21609/2021

(1)

REPORTABLE:

NO

(2)

OF

INTEREST TO OTHER JUDGES:NO

(3)

REVISED:NO

16/01/2025

In the matter between: R[...]: J[...]
 A[...]
 Applicant
 And
 R[...]: T[...]
 V[...]
 Respondent

JUDGMENT

FISHER J

Introduction

- [1] This is an application by a husband (the applicant) against his estranged wife for a declaration that the contents of a complaint laid against the applicant with the Legal Practice Council (LPC) amount to contempt of a court order. The applicant is an attorney of some years standing.
- [2] The divorce proceedings have been marred by acrimony. One of the ways in which this acrimony has been expressed is through the respondent, Mrs R[...] publishing allegations regarding the alleged impropriety of the applicant in relation to his professional conduct and personally.
- [3] The applicant seeks a suspended sentence and costs on a punitive scale.
- [4] The defence of Mrs R[...] is simple. She says that she is protected by privilege as she had the right to make complaints to the applicant's professional body. She argues further that, even if she is wrong in this, she erroneously believed that she was entitled to make the report and thus she cannot be found to be wilful and mala fide.

Material

facts

- [5] On 13 June 2021 the applicant obtained an order ex parte, against Mrs R[...] and Mr A[...] L[...], with whom she has conducted a long-term relationship.
- [6] Mr L[...] has taken up a cudgel in support of Mrs R[...] against the applicant. He has made himself complicit in what is aptly described as a relentless campaign against the applicant which involves repeatedly litigating against him and attempts to malign him.
- [7] Mr L[...] and Mrs R[...] opposed the confirmation of the interdictory relief which had been obtained in the context of this conduct. The matter became an opposed application before Maier-Frawley J. Final judgment and order were handed down on 13 June 2022.

- [8] The court order essentially constitutes a confirmation of the interim order and provides, in relevant part, that the first and second respondents are interdicted and restrained from:
- i. publishing any communications, including electronically or social media platforms, about the applicant which contain allegations and/or insinuations regarding any alleged impropriety be it personal, professional or fiscal;
 - ii. making any communication, whether in writing, telephonically or in person that threatens, insults and/or seeks to undermine or harm the applicant's reputation and dignity;
 - iii. harassing, threatening, intimidating or verbally or physically abusing the applicant.
- [9] Applications for leave to appeal by both Mrs R[...] and Mr L[...] were dismissed with costs.
- [10] The maligning and defamation did not stop. The applicant later obtained an order in terms of which Mr L[...] was convicted of contempt and fined R 70 000.
- [11] The breakdown in the marital relationship has been characterised by much litigation on the part of Mrs R[...] against the applicant. There have also been proceedings brought by Mrs Stockil, who is the mother of Mrs R[...], to which Mr R[...] has lent her support.
- [12] A table has been produced in the heads of argument filed on behalf of the applicant that sets out particulars of the various proceeding brought. It bears reproducing here in that it suggests a high level of animosity by Mrs R[...] towards the applicant. This is of some relevance to the considerations relating to wilfulness and mala fides which this court must embark on.

Commenced Court and case number Nature of Proceedings Outcome Date of outcome
 Respondent's representatives 17-May-21 Johannesburg High Court 24248/2021 Divorce action
 Pending Adv R Du Plessis SC with Adv Boonzaaier (Pretoria Bar) Adv AA de Wet SC (Johannesburg Bar) Adv S Nathan SC (Johannesburg Bar) 10-Jun-21 Worcester Magistrates Court 954/2021
 Domestic Violence Withdrawn by consent, interim order set aside 10-Aug- 21 Mr Esterhuyze (attorney) Van Zyl Hofmeyr Attorneys 12-Jun-21 Johannesburg High Court 21609/2021 Interdict
 Final order granted in favour of Mr R[...] 13-Jun- 22 Adv E Furstenburg (Johannesburg Bar) 23-Jul-21 Midrand SAPS 176/07/2021 Theft charges Nolle prosecuted 16-Sep-21 Johannesburg Magistrates Court DV1323/2021 Domestic Violence (Mrs R[...] on behalf of Mrs Stockil) Dismissed with costs on attorney client scale 27-Oct- 21 Mr Fouché (attorney) Fouché Attorneys 29-Sep-21 Randburg Magistrates Court 1716/2021 Domestic Violence Dismissed Mr Fouché (attorney) Fouché Attorneys 24-Jan-22 Johannesburg High Court A3007/2022 Mrs Stockil's appeal against dismissal of protection order Withdrawn with tender for costs 20-Jan- 23 Adv JC Borman (Johannesburg Bar) drew heads of argument

- [13] The subject of this litigation is a complaint laid with the LPC against the applicant on 28 October 2023. The complaint reads as follows and is set out in full:

"I am going through a very acrimonious and costly divorce with Attorney J[...] A[...] R[...] of R[...] Inc. who was 'Lawyer of the year in 2020'. Two and a half years down the road and nearly R3 million later he continues to bully me through the legal system. Being a lawyer, he knows every trick in the book and I have been at a huge disadvantage since day one. He is a diagnosed supreme narcissist who lies under oath and who knows how to manipulate the legal system.

His strategy backed up by lies which he swore under oath was to:-

1. run me out of money.
2. silence me.

For the past two and a half years I have been defending myself in Magistrates Courts, Police Stations, and the High Court. He has stolen files from my house that are needed for my divorce, he had me thrown out of our marital home and somehow got an interdict against me from a High Court Judge on a Sunday night without any proof of his false allegations. He has threatened me with a jail sentence, he victimised my 88-year-old mother who lived at the bottom of the garden. He hacked into my laptop, cell phone and erected cameras to spy on me. I can go on and on regarding his despicable bullying behaviour and yet he gets away with it. I have messages, photographs, video clips and emails which can back up my version of events. He does not. He simply says what he wants the Courts to believe and they do! They seem to side with him time and time again and I'd like to ask why?

For the past two and a half years he hasn't paid a cent towards my legal fees while he has all the money and power and enabling him to employ the top legal firms in the country. To date he has been represented by:

Beverly Clarke, who withdraw from the record.

Ulrich Roux who withdrew from the record.

Deanne Khan who's currently representing him.

It took Me two and a half years to get to Court for my Rule 43 as there were many strategic delays. I ended up with yet another unscrupulous Lawyer Graeme Krawitz, who lied, false promises and went to court totally unprepared as he only briefed senior council the day before. I only met her on the steps of the Court, so how was she supposed to represent me accurately, is still a mystery. Graeme had previously promised to get Laurence Hodes SC to represent me in Court whom I was more than happy with. Laurence told me that he was busy but could help me in the next few months.

This proved to be another lie as a few days before my Court date Graeme said he was unavailable so I landed up with Shirley Nathan SC who I met on the steps of the Court. In total Graeme Krawitz stole nearly a million rand from me. The outcome of my Rule 43 Court case is that, not surprisingly, the Judge ruled YET AGAIN in favour of J[...] who now pays me even less maintenance than he did before. When we lost in the High Court my Lawyer's casual remark was that his in his opinion the Judge was wrong.

I have been advised that I should not report Graeme for his dishonest business practice as word will get around the legal circles and I won't be able to find a Lawyer to represent me in my main divorce case. When I asked him to withdraw from record for his poor performance and lack of preparation for my Rule 43 Court case, he sent me another invoice for nearly R354k on top of the R530k he had already been paid! When I went through each item, it was clear he had overcharged to the extreme for telephone conversations and meetings which never took place. When I questioned him he said that I had signed a document allowing him to charge the maximum rate. When I asked them to send the agreement to me, it looked as though he had cut and pasted my signature to the bottom of the page. When I pointed this out he quickly withdrew the last invoice.

I am now without legal representation while J[...], who admits in his Financial Disclosure that he is worth over R110 million is able to employ the top law firms in the country. I cannot defend myself against a top attorney and a top law firm on a budget of only R150k, most of which has already been spend on medical bills which he is supposed to pay that doesn't. He is in contempt of court but knows I can do nothing about it.

I have already had to spend nearly R3 million trying to defend myself against all the 'side shows' he has instigated which I paid for by obtaining a loan against the value of my house.

These side shows include:

Getting my Protection Order overthrown on a technicality. I was forced to approach the Magistrate Court in Worcester after he threw me off the farm in Touws River. He sent the entire legal team of Clarks Attorneys, including Beverly herself, to the hearing in Worcester. I had very little representation.

As there was loadshedding, he managed to get the Protection Order overthrown as it was not recorded in Court.

High Court Interdict: He then got an interdict against me from a High Court judge on a Sunday night based on complete lies. I have all the evidence needed to prove that I am telling the truth and yet because he can afford the best senior counsel the courts always rule in his favour. I have therefore been silenced and I'm not allowed to say anything bad about him. He is obviously scared of the truth.

He hacked into my computer and my private cell phone which he even admits in High Court documents, and yet AGAIN the Court seemed to favour him as the victim and me the villain. What about the POPI Act? He has had me followed, stalked, he has erected cameras to spy on me he has lied to the Courts about my living conditions, personal life and security. He defies the

judgment in my Rule 43 and does not pay the maintenance that the Court says he must. The Forensic Audit (attached) on his Financial Discovery shows that his affairs are false, misleading and dubious. How can a one-man band lawyer accumulate over R98,000,000-00 honestly in 14 years? Annual Financial statements are not signed off and millions simply disappear from year to year. He has somehow managed to cancel our life policy ceded to me which is illegal, he has cooked the books in his dealings with SARS (see attached) one example being that he stole R1.1 million of my salary. I could go on and on. J[...] A[...] R[...], Lawyer of the Year 2020, is a disgrace to the legal system but he appears to be protected by it.

I have ample proof in the form of documents, emails, voice recording, photographs, videos etc that shows he's not telling the truth but because he is a top attorney and the legal system is his playground, he just keeps on getting away with it.

Currently, as he knows I have no legal back up, I'm being bombarded by Deanne Kahn as they are now trying to bully and force me into a pre-trial knowing I have no legal representation. Karen Greyling is a friend of mine and I've been following her case in the Constitutional Court as J[...] also forced me to sign a prenup without accrual. It now looks like I am able to claim what I worked so hard for over the past 14 years I therefore need more time to amend my Discovery but he and his legal team are relentlessly trying to push me into an early trial.

A divorce is stressful enough without being abused by members of the legal profession. Please would you let me know if there is anything the Legal Practice Council can do to put a stop to this unprecedented bullying by both J[...] and his legal team? If you cannot assist, then my only option will be to approach the media for help but I have been threatened by the lawyers that I will be held in contempt of Court and I will go to jail.

Is this really how a fair and just legal system is allowed to treat people at a disadvantage just because of money and power? I hope not.”

[14] The respondent alleges that she had no other choice but to approach the LPC. She alleges that she cannot afford to bring further litigation and that she has thus made the complaint. She alleges that she was advised to lodge the complaint after talking to an official at the LPC. She does not disclose the identity of this person.

[15] Chillingly, she threatens that if the LPC does not come to her assistance she will go to the media. She says this well knowing of the order against her. To my mind, this suggests a lack of respect for the order.

[16] The applicant was required to respond to the complaint and did so. Essentially, he denied the charges made against him and sought to place them in perspective with reference to the divorce proceedings.

[17] In her reply to this answer to the complaint, the respondent published to the LPC further matter which the applicant alleges also breaches the order. She stated:

“38.1. “The applicant being a legal practitioner who is abusing the legal system to bully and harass while continuing to commit acts of Domestic Violence.”

38.2. “Dr Leonard Carr diagnosed [the applicant] as a ‘supreme narcissist’. Bullying, manipulating, lying under oath, playing the victim etc are all part of the behavioural pattern of a narcissist.”

38.3. “In Dr Carr's own words, he said [the applicant] would continue to bully and harass me through the legal system which is exactly what has been happening for the past two and a half years. Surely lying under oath and committing acts of Domestic Violence is an unacceptable code of conduct for an Attorney of the High Court?”

38.4. “That he should be allowed after 13 years of marriage to get away with evicting me from my home, stealing all my possessions, slandering my good name and committing acts of Domestic Violence.”

38.5. “Certainly, I have been exposed to overt criticism by Judges and Magistrates over the past two and a half years as he has brilliantly manipulated the legal system to make him the victim and me the villain. If his lies under oath had been exposed, it would be a completely different story today. Again, I wouldn't be making these accusations if I didn't have proof. While he has the money, power and professional knowledge of how to mislead the courts, I have been left trying to defend myself with junior legal counsel that are no match for the top divorce lawyers this country has to offer.”

38.6. “All the various judgements granted against me were obtained by clever legal footwork and knowing how to get my charges dismissed on technicalities which left the door wide open for J[...] to gain advantage.”

38.7. “...and then mysteriously managed to get a High Court Judge on a Sunday night to grant him and Interim Interdict against me with no actual proof of any misconduct on my side.”

38.8. “It is blatantly clear that [the applicant] manipulated the legal system to outsmart me. And he has been doing so ever since. Very little that is laid out in court papers is based on the actual truth.”

38.9. “[The applicant's] actions speak for themselves. To lie under oath, to abuse the legal system and commit acts of Domestic Violence while operating as an Attorney of the High Court, proves he has no respect for the law whatsoever.”

[18] The applicant was ordered to furnish the respondent with a contribution to her legal costs in the amount of R 150 000

pursuant to the rule 43 proceedings.

[19] Mrs R[...]’s contention is that this is not sufficient to allow her to pursue the litigation that she needs to pursue. Reference to the complaint reflects that she also says that he “hasn’t paid cent” towards her legal fees. This is contradictory.

[20] The respondent's attorneys of record withdrew on 04 March 2024. The applicant alleges that this was staged for appearances only. The respondent was, however, represented before me by counsel although she filed heads of argument in her own name. It seems that she continues to be represented in the divorce proceedings.

Applicable law

[21] An applicant who alleges contempt of court must establish[1]:

- a. An order was granted against the respondent;
- b. The respondent was served with the order or had knowledge of it; and
- c. The respondent failed to comply with the order.

[22] Once these three elements have been established, wilfulness and mala fides are presumed, and a respondent bears an evidentiary burden to establish reasonable doubt. If a respondent fails to do so, contempt will be established. These aspects must be established by the applicant beyond reasonable doubt .

[23] A deliberate failure to comply with a court order is not enough, for good faith avoids the infraction. Even a refusal to comply that is objectively unreasonable may be bona fide, although unreasonableness could evidence lack of good faith.[2]

Discussion

[24] The lengthy complaint has been reproduced in its totality in order that it be assessed on the basis of its motive; belief in the right to make the complaint and the existence or otherwise of mala fides.

[25] The complaint contains sweeping generalisations; name calling, accusations without substantiation, rambling vitriol which does not lend itself to the making of any inquiry or the determination of any facts. What is more, most of what is set out does not bear any relationship to the professional life of the applicant.

[26] If a person with some working knowledge of the business world, as I consider Mrs R[...] to have, seeks to make a complaint for the purpose of investigation by a Tribunal that person would be aware of the fact that if one wanted specific misconduct to be addressed on the basis that proper reasoning was adopted it would be necessary to set out specifics of the occurrences such as dates times and precise descriptions of how the misconduct has taken form.

[27] An analysis of the subject matter of the complaint suggests to me that the complaints were not made with the purpose of achieving redress in relation to a specific incident which would engage the powers of the LPC in a constructive way.

[28] Much of what is said, re-engages the defamatory and disturbing matter the publication of which served to bring about the order in the first place.

- [29] To my mind, the engaging of the processes of the LPC to publish the defamatory and damaging accusations suggests guile.
- [30] Mrs R[...] is well aware that it is in breach of the court order to make the utterances in question. She has nonetheless sought to do so under the guise of the reporting of professional misconduct of an attorney for the purposes of obtaining a consideration of whether such misconduct has taken place.
- [31] Even if there were any complaint which could be said to have some traction (and I must add I cannot see one) the fact that such complaints are couched in a gratuitous and vitriolic tirade mean that there is a clear breach of many aspects of the order.
- [32] It comes as no surprise that the LPC has dismissed the “complaints”.

Conclusion

- [33] To my mind the “complaints” do not engage the jurisdiction of the LPC with reference to professional misconduct and neither were they intended to do so. The complaints are wide ranging and gratuitous. They engage the same aspects which founded the judgment of Maier-Frawley J in her careful and detailed judgment.
- [34] There is no doubt that the intention behind the claim was only to malign and defame the applicant.
- [35] Regrettably, I must find that Mrs R[...] has sought to abuse the processes and facilities allowed under the Legal Practice Act[3] in a bid to continue her defamation campaign under the banner of a report to a tribunal.
- [36] Her threats to go to the media suggest that she will not stop this campaign of defamation and abuse unless this court intervenes.

Order

- [37] I order as follows:
1. The respondent is in contempt of the order of Maier-Frawley J dated 13 June 2022.
 2. The sentence imposed is 30 days imprisonment.
 3. The sentence is suspended for a period of five years provided the respondent does not breach the order again during this period.
 4. The respondent is to pay the costs of this application on the scale as between attorney and client to be taxed on the basis of scale C where relevant.

FISHER J

JUDGE OF THE HIGH COURT

JOHANNESBURG

This Judgment was handed down electronically by circulation to the parties/their legal representatives by email and by uploading to the electronic file on Case Lines. The date for hand-down is deemed to be 16 January 2025.

Heard: 12 November 2024

Delivered: 16 January 2025

APPEARANCES:

Applicant's counsel: Adv. A de Wet SC

Applicant's Attorneys: Deanne Kahn Attorneys

Respondent's Counsel: to be confirmed

Respondent Attorneys: Van Zyl & Hofmeyr Inc

[1]Fakie NO v CCII Systems (Pty) Ltd [2006] ZASCA 52; 2006 (4) SA 326 (SCA); Pheko v Ekurhuleni City 2015 (5) SA600CC

[2] Fakie above at para 9.

[3] Legal Practice Act 28 of 2014.

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