

SOUTH AFRICA / JUDGMENT

M v Minister of Safety and Security and Others (4015A/2007) [2007] ZAGPHC 326 (23 November 2007) [2007] ZAGPHC 326

COURT
High Courts - Gauteng

BEFORE
Pretorius

CASE / FILE NUMBER
4015A/2007

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In

the matter between: E.M. Applicant
 and
 THE
 MINISTER OF SAFETY AND SECURITY First
 Respondent
 SUPERINTENDENT
 L GROENEWALD Second
 Respondent
 JAN
 KOVSKI Third
 Respondent

JUDGMENT

PRETORIUS J ,

This is an application for a final interdict in which the following are requested: "1. Dat die respondente verbied word om die applikant op te neem in n psigiatriese, Staats hospital of enige soortgelyke instelling.

Dat die derde respondent verbied word om verdere klagtes teen die applikant te le waarin beweer word dat die applikant geestes

ongesteld is. Dat die derde respondent verplig word om die koste van die aansoek te betaal. "

The applicant had given notice of intention to amend the notice of motion, but failed to do so and the court will adjudicate the matter as it stands.

The requisites for a final interdict are that the applicant has to show a clear right, an injury committed or reasonably apprehended and the absence of any other remedy available to the applicant.

The history of the matter is that on 1 February 2007 the second respondent requested the applicant's attorney to make arrangements

for her to be admitted at the Pretoria Academic Hospital for observation in terms of the Mental Health Act, Act 170 of 2002.

On 2 February 2007 the applicant launched an urgent application as set out in the notice of motion. The first and second respondents

withdrew their opposition and the applicant is not seeking any redress against first and second respondents. This application relates solely to the third respondent, who opposes the application.

Two of the applicant's neighbours, Mr Roos and Serfontein, erected electric fencing on the boundary walls, separating their and the applicant's properties in 2004. The applicant reported this to the Tshwane City Council in letters dated 27 February 2004; 23 March 2004; 26 March 2004; 10 May 2004; 18 April 2004 ; 14 May 2004 and 30 August 2004.

In 2004 Mr Roos and Serfontein laid a criminal charge of malicious damage to property against the applicant. The third respondent was called as a witness, by the state during the trial on 4 August 2004 and 1 October 2004. During his evidence he admitted that he had written a letter to the Minister of Safety and Security in which he requested that the applicant be sent for psychiatric evaluation and treatment.

On 7 March 2004 the third respondent wrote letters to Rapport, Sunday Times, SABC 2 and E-TV in which he made certain allegations

regarding inter alia the applicant's mental health.

It is conceded by counsel for the applicant that this letter was the cause of the application being launched on 2 February 2007

- 3 years after all these complaints and letters had been sent and reported.

The third respondent alleges that he had not caused the applicant to be referred to a mental health institution or for observation in terms of section 40 of the Mental Health Act. He had nothing to do with it. Section 40 of the said Act provides:

"40. Intervention by members of South African Police Service.

- (1) If a member of the South African Police Service has reason to believe, from personal observation or from information obtained from a mental health care practitioner, that a person due to his or her mental illness or severe or profound intellectual disability is likely to inflict serious harm to himself or herself or others, the member must apprehend the person and cause that person to be (a) taken to an appropriate health

establishment administered under the auspices of the State for assessment of the mental health status of that person;"

It is clear from the provisions of the Act that the third respondent could not act in terms of this provision, but only members of the South African Police Service could do so.

The third respondent denies that he had anything to do with the members of the South African Police Service trying to commit the applicant in terms of section 40. The applicant requested an undertaking from the third respondent that he would not lay further criminal charges against her. It is common cause that the applicant had laid 55 complaints against her neighbours, and more specifically 41 charges against the third respondent.

Mr de Villiers, for the applicant, had to concede that all the actions that the applicant complained of, took place more than 3 years ago - that is the letter was written on 7 March 2004; the article in Rapport was on 28 March 2004; the trial in which the third respondent testified took place on 4 August 2004.

The applicant alleges that the right the interdict should protect is her right to live next to her neighbours without any interference. In the Law of South Africa, first re issue the learned author at p 310 finds:

"Whether an applicant has a right is a matter of substantive law. Whether that right is clear is a matter of evidence. In order therefore to establish a clear right the applicant has to prove on a balance of probability facts which in terms of substantive law establish the right relied upon. "

The injury being complained of must be a continuing one, an act already committed does not qualify for an interdict. The only charge that the third respondent laid against the applicant was in August 2004. There is no evidence of a continuing injury at all. No charges have ever been laid by the

third respondent alleging that the applicant is deranged and no proof of such charges can be found in the papers. The application for the interdict against the third respondent should not succeed.

The applicant furthermore shows no apprehension that an injury will be committed. It must also be noted that the first and second

respondents had given an undertaking, which was made an order of court, on 5 February 2007 regarding the first prayer of the notice of motion and that apprehension of committal has fallen away.

I am of the opinion that having regard to the provisions of section 40 and the order of court of 5 February 2007 there is no reason for an interdict against the third respondent. The third respondent cannot rely on the provisions of

section 40 in any event and the applicant has been granted a safeguard by the first and second respondents.

The third requirement for a final interdict is that the applicant has no other satisfactory remedy available. In this instance the applicant could institute a claim for damages. The argument by Mr. de Villiers that the third respondent wants to commit the applicant to a psychiatric hospital is unproven and without any merit at this stage. The actions of 2004 do not entitle the applicant in 2007 to an interdict.

I find that the applicant has not proven a clear right or an injury committed or reasonably apprehended which she can rely on. Her evidence relates to events which took place in 2004, as conceded by her counsel. This court cannot find that it cannot be argued there is no other satisfactory remedy available as the applicant can institute a case for damages. The application for interdict against the third respondent should not succeed.

The following order is made: The application is dismissed with costs.

C. Pretorius Judge of the High Court

Case number: 4015A/2006 Heard on: 7 November 2007

For the Applicant: Adv R F de Villiers Instructed by: Leistner

For the Respondent: Adv P S de Waal Instructed by:

Date of Judgment: 22 November 2007

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Prepared on 14 October 2026 · Esheria