

SOUTH AFRICA / JUDGMENT

Nel N.O. v Macbeth Attorneys Incorporated and Others (86454/16) [2016] ZAGPPHC 1127 (7 December 2016)

[2016] ZAGPPHC 1127

COURT

North Gauteng High Court, Pretoria

BEFORE

Tlhapi V V

CASE / FILE NUMBER

86454/16

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IN

THE HIGH COURT OF SOUTH AFRICA

(GAUTENG

DIVISION. PRETORIA)

NOT

REPORTABLE

CASE

86454/16

DATE

7/12/2016

In

the matter between:

ADV

P NEL

N.O APPLICANT

and

MACBETH

ATTORNEYS INCORPORATED FIRST

RESPONDENT

MANDLA

MACBETH

NCONGWANE SECOND

RESPONDENT

BONGANIMATSANE

THIRD RESPONDENT

SIBONGILE

MUWANBA CHIMIMBA

FOURTH RESPONDENT

FRIDAY
JUMBE
FIFTH RESPONDENT
LAW
SOCIETY OF THE NORTHERN PROVINCES SIXTH
RESPONDENT

JUDGMENT

TLHAPIJ

[1] The applicant approached the court by way of urgency for the following orders:

"2. Declaring that paragraph 4 of the order made by Molahlehi AJ in this Court on 21 November 2016 is an interlocutory one which does not have the effect of a final order and that its operation and execution is

not suspended pending the decision of the application for leave to appeal lodged by the First and Second Respondents on 23 November 2016 or by any appeal which may be lodged by them in the event of leave to appeal being granted by this or any other Court;

3. Declaring the First and Second Respondents to be in contempt of paragraph 4 of the order made by Molahlehi A J on 21 November 2016;
4. Imposing a fine in an amount to be determined by the honourable Court in its discretion on the First Respondent;
5. Committing the Second Respondent to prison for a period of 90 days;
6. In the alternative to paragraphs 2 and 5 above:

6.1 An order that the operation and execution of paragraph 4 of the order made in this matter by Molahlehi AJ on 21 November 2016 shall not suspend the decision of the application for leave to appeal lodged by the First and Second Respondents on 23 November 2016 or by any appeal which may be lodged by them in the event of leave to appeal being granted either by this or any other Court;

6.2 An order that, in the event of the First and Second Respondents failing to comply with paragraph 4 of the said order by the close of business on the date of this order, they shall be in contempt of court; and

6.2.1 the First Respondent shall be liable for a fine in an amount to be determined by the Honourable Court in its discretion...;

6.2.2 the Second Respondent shall be committed to prison for a period of 90 days"

This application is opposed

[2] In my view it is not necessary to once more deal with the background which has been dealt with by the court a quo. Paragraph 4 of Molahlehi A J's order of 21 November 2016

was of relevance to the first and second respondent, the latter being a director and'. shareholder of the first respondent and the order reads:

"4. The first respondent is ordered to, within (2) days of service of this order, pay to Weavind and Weavind Attorneys into their trust account, any or all funds held on behalf of Ms Wezi Beverly Jumbe, which were received by the first respondent in terms of the court order dated 24 May 2013 under case number 50304/2008, together with

interest earned thereon to be dealt with by Weavind and Weavind in accordance with the court order of 24 May 2013."

[3] It is averred that when this application was launched the first and second respondent were in contempt and had not complied with the order of Molahlehi AJ as envisaged in paragraph 4 above. The respondents averred that they had served their application for leave to appeal which was not accepted by Molahlehi AJ because his reasons were not as yet available. In my view the absence of the reasons should not have prevented the service of an application for leave to appeal. A stamped copy of the application for leave to appeal was sought to be handed in from the bar which was objected to by counsel of the applicant. I did not refuse the handing in of a stamped copy of the application. Attached to this application was a copy of the said application for leave to appeal which did not bear a court stamp or proof that it had been served on the applicant.

[4] As I see it, it is not open to the applicant to seek a declaration on urgency that the order in paragraph 4 was an interlocutory one which does not have the effect of a final order. Of importance and urgent is that on 31 October 2016 the first and second respondent were informed that their client Ms Wezi Beverly Jumbe, had terminated their mandate and this was followed by an application which resulted in orders of 21 November 2016 of which paragraph 4 is one of them.

The first and second respondent failed to comply with the order and such order still exists. Even if the application for leave was properly filed the monies held for the client belonged to the client. If a mandate has been terminated an attorney has no right to deal with such monies or to hold on to such monies unless otherwise directed by a court. In as far as such payment was not made within the specified period, the first and second respondents were in my view in contempt.

[5] Furthermore, the order relates to any or all funds held on behalf of Ms Jumbe to be deposited into the trust account of Weavind & Weavind by the first and second respondents, being monies which were paid pursuant to a court order of 24 May 2013 under case number 50304/2013. The appeal is still to be adjudicated upon and the sixth respondent has been called upon to investigate the conduct of the first and second respondent in as far as their client is concerned. The respondents themselves aver that they too have called upon an

investigation by the sixth respondent.

- [6] The first and second respondent have within their answering affidavit launched a counter application. As I see it, it relates to the allegation that the order granted by Molahlehi AJ was amended in their absence. The Applicant does confirm such fact and gave reasons

and in as far as such conduct may have been prejudicial, the first and second respondents are entitled to address such issues in the appeal that has already been launched on proper application being made. It is my view that this counter application is misplaced and is not urgent, and should be struck off the roll.

- [7] Should the first and second respondents in light of the finding that there was contempt, seek to comply with paragraph 4, and in view of the complexity of the issues in the matter which is the subject of appeal, in the interests of justice, those monies which have been ordered to be deposited into the trust account of Weavind & Weavind should be paid into a separate interest bearing account and be frozen until such time as the sixth respondent has completed its investigation as ordered by the court a quo and given directive as to how the account is to be conducted. In my view the sixth respondent is the only statutory body which is entitled to speedily conduct an in depth investigation into the Trust accounts of the first and second respondents. It is the only body which can with certainty and after a proper investigation has been conducted assist the court. In as far as the sanction as formulated in the notice of motion in respect of the first and second respondent is concerned, it is my view that there would be an unnecessary duplication in punishment.

- [8] In the result the following order is given:

1. The first and second respondents are found to be in contempt of court;
2. The second respondent is committed to prison for a period of 30 days and the implementation of this order is suspended for six months from the date of this order. The second respondent is directed to show cause at his initiative why such order should not be made final.
3. The second respondent is further ordered to serve his reasons on the applicants and the sixth respondent before setting the matter down for consideration.
4. The monies paid into the Trust Account of Weavind and Weavind by the first and second respondents are to be deposited into a separate interest bearing account and be frozen, until such time as the sixth respondent has finalized its investigation.
5. The first and second respondent's are ordered to pay the costs of this application;
6. The first and second respondent's counter application is truck off the roll due to lack of urgency;

TLHAPI V V

(JUDGE OF THE HIGH COURT)

APPEARANCES FOR APPLICANT

WEAVIND AND WEAVIND ATTORNEYS

APPEARANCES FOR THE RESPONDENT

MACBETH ATTORNEYS INC

JUDGEMENT

DELIVERED

7 DECEMBER 2016

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Prepared on 13 October 2026 · Esheria