

SOUTH AFRICA / JUDGMENT

Nobre and Another v Sneeche

(15236/2018)

[2023] ZAGPJHC 589 (30 May 2023)

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COURT

South Gauteng High Court, Johannesburg

BEFORE

Fisher

CASE / FILE NUMBER

15236/2018

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REPUBLIC OF SOUTH AFRICA
IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG LOCAL DIVISION,
JOHANNESBURG
Case Number: 15236/2018
NOT REPORTABLE
NOT OF INTEREST TO OTHER JUDGES
NOT REVISED
30.05.23
In

the matter between:

NOBRE,
RUI MIGUEL RODRIGUES
First Applicant
RN GRIFFIN
INVESTMENTS (PTY) LIMITED
Second Applicant
And
SNEECH,
BARRY HYLTON
Respondent
Neutral Citation: Nobre,
Rui Miguel Rodrigues v Sneeche, Barry Hylton (Case
NO: 15236/2018) [2023] ZAGP JHC 589 (30 May 2023)
ORDER
[1] The
respondent is declared to be in contempt of the order of Lagrange J
of 16 July 2019 under case number 15236/2018 (the order).

[2] In consequence of this declaration the respondent is sentenced to 60 days imprisonment which sentence is suspended on condition that he is not again found to be in contempt of the order or any other order of court.

[3] Mr Sneechee is to pay the costs of this application on the scale as between attorney and client.

JUDGMENT

Fisher J

Introduction

- [1] This is an application for a declaration of contempt of court against the respondent, Mr Sneechee and an order that he be imprisoned for a period of 30 days or more. The order in question declares him a vexatious litigant and precludes him from bringing legal proceedings against the applicants or which implicate their interests.
- [2] The applicants, Mr Nobre and his company, Griffen argue that a compelling order in the form of a suspended sentence is not appropriate because of the repeated, wilful and remorseless approach of Mr Sneechee to the extensive and unrelenting litigation that he has embroiled the applicants in since he lost an arbitration against them in 2007.

The issues

- [3] Mr Sneechee concedes the vexatious litigant order, knowledge of the order and breach thereof.
- [4] It is settled law that the applicants must prove beyond a reasonable doubt that the respondent was deliberate and mala fide in breaching the order.[1]
- [5] Mr Sneechee concedes and understands that he bears an evidential burden to show that he was not deliberate or mala fide.
- [6] Mr Sneechee's case is, in essence, that he misunderstood the legal position. He did not intend to breach the order he says. He seeks to explain that he did not believe that the proceedings which he instituted against the applicants were hit by the order. He alleges that he has latterly accepted his mistake. He argues that, because he misunderstood the position, it should be found by this court that he was not in wilful contempt.
- [7] The issue is thus whether Mr Mr Sneechee is to be believed as to his lack of understanding or whether, on the undisputed procedural background, the applicant has established beyond reasonable doubt that his contempt was deliberate and in bad faith.

Procedural background

[8] To understand Mr Sneeche's defence it is necessary to have reference to the long and complicated history of litigation between

the parties. It dates back to 2007.

[9] Mr Sneeche represented himself in this litigation before me until the days before the final hearing of the matter when he obtained the services of an attorney and counsel. It appears that up until then he had been without representation since at least August 2016.

[10] Between 2007 and 2016 Mr Sneeche was serially represented by four sets of firms of attorneys. The fact that Mr Sneeche had attorneys during this period did not mean that he left the proceedings completely in their hands. He would appear in person from time to time if he felt moved to do so. He has shown himself in my Court to be able in presenting his arguments. He is articulate and appears to be intelligent.

[11] On 16 July 2019, this court declared Mr Sneeche to be a vexatious litigant pursuant to the applicants' application for such

declaration in a vexatious litigant application which came before LeGrange J in this court.

[12] On 21 January 2020 Mr Sneeche's estate was provisionally sequestered per the judgment of Lombard AJ and on 23 June 2020 he

was finally sequestered per Goedhart AJ. He has sought to appeal and set these orders aside. In the course of doing so he has made allegations of bias against Goedhart AJ and incompetence against Lombard AJ.

[13] Mr Sneeche's sequestration and the declaration that he is a vexatious litigant and thus cannot institute legal proceedings which affect the interests the applicants without leave of the court are central to this application for a declaration of contempt. It is the litigation which flows from the sequestration which is one of the offending legal processes.

[14] It is helpful to go back to where the relationship between Mr Nobre and Mr Sneeche started. For this we must go back to the incorporation of Blue Dot Properties 56 (Pty) Ltd (Blue Dot) in 1998. Mr Nobre was its first director and all its shares were held by, Griffen which was controlled by Mr Nobre.

[15] In November 1998 Blue Dot purchased a commercial property for approximately R 19 million. In January 1999 Blue Dot

leased the property to Midas Ltd. This was a valuable 10-year lease. Around this time Mr Sneeche was appointed a director of Blue Dot. At the same time 50% of the issued shares were transferred to a company controlled by Mr Sneeche, Hannington Ltd registered in the British Virgin Islands.

[16] The sole income of Blue Dot was the monthly rental payment from the Midas lease. The entire rental was paid directly to the bank which had financed the immovable property.

- [17] The business relationship between Mr Nobre and Mr Sneece progressed to a point where they were to part ways. There was a sale of shares by Hannington to Griffen in 2003 which should have meant the end of their commercial relationship. But this was not to be.
- [18] During March 2007 Mr Sneece brought an action for damages against Griffen on the basis of a cession of Hannington's alleged claim for damages. The gravamen of the complaint was that Mr Nobre on behalf of Griffen had fraudulently withheld information pertaining to the renewal of the lease with Midas which influenced the sale of shares to Hannington's detriment.
- [19] The action was ultimately referred to arbitration by the parties before Mr Michael Kuper SC.
- [20] After a lengthy arbitration Mr Sneece's claim was dismissed with costs.
- [21] Mr Sneece took Mr Kuper's award on appeal to an agreed appeal tribunal comprising retired Justice of the Constitutional Court, Johan Kriegler, retired former President of the Supreme Court of Appeal, Justice Craig Howie and Advocate Alistair Franklin SC.
- [22] The findings and award of Mr Kuper SC were upheld and the appeal was dismissed with costs on 13 June 2011.
- [23] Mr Sneece then brought a review of the arbitration and appeal award. At that stage he had already run up an untaxed bill of R 4 million in respect of costs awarded against him in the proceedings.
- [24] The review was dismissed by Sutherland J (as he then was). Mr Sneece's application for leave to appeal was also dismissed. The respondent then sought leave to the SCA which was refused.
- [25] An attempt to obtain payment of taxed costs from Mr Sneece was met with a nulla bona return.
- [26] Shortly after this Mr Sneece threatened Mr Nobre with criminal charges of theft and fraud if he was not paid an amount of money.
- [27] Payment of the costs of the arbitration which had been awarded to Mr Nobre was then sought. In response, Mr Sneece threatened to bring an application to have the award set aside on grounds of perjury and fraud. The threatened application never came.
- [28] In May 2014 Mr Nobre issued an application to have the award and the appeal award made an order of court. Mr Sneece filed a notice to oppose a month later. No answering affidavits followed.

- [29] The applications were duly set down on the unopposed roll only to be met at the last minute with a notice in terms of rule 6(5)(d)(iii) in which prescription was raised as a point of law. This resulted in postponement and the further frustration of the orders sought by Mr Nobre in the form of hapless interlocutory litigation at the hands of Mr Sneece.
- [30] By May 2016 the applicants were no closer to obtaining the orders sought in relation to both awards. The litigation launched by Mr Sneece in order to frustrate the obtaining of the orders was relentless.
- [31] At this stage, Mr Sneece resorted also to the criminal processes. He laid criminal charges against Mr Nobre in June 2016. These charges have not been pursued.
- [32] In addition, he laid criminal charges against the arbitrator and the appeal tribunal on the basis that they had allegedly aided and abetted corruption. He also reported the advocates involved to the General Council of the Bar
- [33] The applications to have the awards made orders were again set down in June 2016 before van der Linde J. After the dismissal of an application for postponement and counter application raised by Mr Sneece, the awards were finally made orders by van der Linde J on 24 June 2016.
- [34] A late application for leave to appeal was refused by van der Linde J in September 2016.
- [35] An application for leave to appeal to the SCA was then filed a month late.
- [36] In these applications for leave to appeal there were the oft repeated charges of fraud and perjury against Mr Nobre. Mr Sneece also dealt with his criminal charges against the members of the arbitration panels. He raised bias in that Kuper SC, Franklin SC and van der Linde J had all been members of Group 621 as was Mr Andre Gautschi SC who is Mr Nobre's lead counsel in this case.
- [37] In essence, the allegation was that these men had engaged in a conspiracy which Sneece contended was akin to "match fixing".

Mr Sneece later went as far as to state that he had acquired information by "chance" that the sister of Franklin SC,

who was a member of the arbitration appeal tribunal, was married to the brother of Mr Gautschi. This was false and apparently an attempt to bolster his conspiracy theory.

- [38] The application for leave to the SCA was refused.
- [39] Mr Sneece then took the avenue of seeking a reconsideration by the President of the SCA. This was refused on 30 May 2017.

- [40] On 03 July 2017, having been refused leave to appeal by van der Linde J, the SCA and its President, Sneece delivered an application for leave to appeal to the Full Bench of the High Court. This application was duly declared an irregular step and Mr Sneece was ordered to pay punitive costs.
- [41] Mr Sneece then brought an action against Mr Nobre and Blue Dot alleging that he was entitled to VAT refunds which had been misappropriated by Mr Nobre. Summary judgment was sought and leave to defend granted. This action was not pursued.
- [42] Mr Sneece has also instituted an action in terms of section 38 of the 1973 Companies Act which also was not proceeded with.
- [43] As I have stated, in mid- 2019, as a result of his unrelenting and mostly ill-conceived litigation, Mr Sneece was declared a vexatious
- litigant.
- [44] An application for leave to appeal followed and the stance taken by Mr Sneece was that this would suspend the vexatious litigant order so that he could continue litigating. In that he was personally not legally represented he apparently believed himself entitled to litigate with relative impunity.
- [45] The applicants then brought an application to put the order into immediate operation in terms of section 18 of the Superior Court Act which succeeded. The application for leave to appeal the vexatious litigant order has not been proceeded with by Mr Sneece.
- [46] Ultimately, there was no other avenue open to Mr Sneece and the substantial costs became due and payable. The costs were not paid and this led to the application for his sequestration.
- [47] The sequestration order and the vexatious litigant order each present an impediment to the institution of any further proceedings by Mr Sneece – he would need the leave of the court because of the vexatious litigant order and he would need the permission of his trustees for litigation to ensue for his estate.
- [48] However, Mr Sneece was undeterred. He continued to litigate and it is for this reason that this application for contempt has been brought. I move to deal with Mr Sneece's continued litigation in the face of these two orders.

The continued litigation by Mr Sneece

- [49] On 3 June 2020 and without leave of the above Court, Mr Sneece issued an application purportedly in terms of rule 53 of the Uniform Rules seeking an order that the writs of execution issued against him by the registrar in respect of the taxed costs forming the basis for the sequestration be reviewed and set aside. The aim was obviously to unseat the sequestration order.

- [50] Mr Nobre's attorney, Mr Paul Kampel immediately notified Mr Sneece that he was in contempt of the vexatious litigant order and invited him to withdraw the rule 53 application. Mr Sneece refused and said he would persist in the application and oppose any contempt proceedings.
- [51] The applicants next delivered an application in terms of rule 30 to declare the application an irregular step.
- [52] On 23 September 2020 the applicants delivered this contempt application. On the same day Mr Sneece instituted a defamation action against Mr Kampel.
- [53] On 10 March 2021 I heard the rule 30 application and a number of other interlocutory applications instituted prior to the vexatious litigant order, including the application to set aside the rule 53 application, which I granted.
- [54] On 1 October 2021 Mr Sneece made a belated application for leave to appeal his sequestration to the Constitutional Court. At this stage a final trustee in Mr Sneece's estate had not yet been appointed.
- [55] Mr Sneece sought to delay the determination of the matters before me in light of these pending matters.
- [56] On 12 October 2021 I directed that the matters be set down after the final trustee had been appointed and the Constitutional Court had ruled on the application.
- [57] The Constitutional Court dismissed Mr Sneece's application for leave on 10 January 2022. On 1 June 2022 the Master appointed two final trustees to Mr Sneece's estate.
- [58] As I have said, on the day that this contempt application was delivered an action for defamation against Mr Kampel was also delivered. In this action Mr Sneece complained of allegations made by Mr Kampel on instruction of his clients in court papers in the litigation.
- [59] A rule 30 application based on the vexatious litigant order was delivered by Mr Kampel in respect of this action and the action was duly set aside.
- [60] On 03 August 2022 Mr Sneece laid a charge against Mr Kampel with the Legal Practice Council. His complaint was based on the assertion that Mr Kampel was aiding and abetting the applicants "to try to enforce an award in the full knowledge that it was unenforceable and in the full knowledge that the writs relied on by him to sequester [Mr Sneece] are illegal".
- [61] This contention is repeatedly made notwithstanding the procedural history above which shows that the arbitral award has been upheld by an appeal panel and the sequestration confirmed all the way up to the President of the SCA and latterly the Constitutional Court.

[62] This contempt application was set down for hearing before me as part of my Commercial Court Management of these matters. I have already handed down orders in respect of most of the other litigation.

The contempt proceedings

[63] The applicants allege that, although he is not legally qualified, Mr Sneece is an astute litigant who has a deep understanding of

procedure. They refer to the fact that he has, over more than 15 years, shown himself to be adept at exploiting the rules of court and legal principles generally. They argue that his resort to protestations of lack of understanding when it suits his purpose are a ruse.

[64] During November 2022 the applicants filed a supplementary affidavit in this contempt application. Its purpose was to bring to the Court's attention the conduct of Mr Sneece with reference to his alleged further and allegedly compounding contemptuous behaviour in the proceedings following the filing of the founding affidavit in September 2020.

[65] The allegations in Mr Sneece's affidavits in the applications for leave to appeal reflect a trenchant and unabashed refusal to accept the binding nature of court findings despite the many failed attempts to appeal and set them aside.

[66] In his complaint to the Legal Practice Council against Mr Kampel dated 3 August 2022 the respondent once again makes clear his disregard for the multiplicity of Court orders of this Court in respect of which he has exhausted his remedies. He states in relation to Mr Kampel:

"There are six essential complaints which I will summarise hereunder, the most serious of which is that he is aiding and abetting his client to enforce an award in the full knowledge that it was improperly obtained and unenforceable and in the full knowledge that the writs relied on by him to sequester me are illegal and have prescribed."

[67] In his supplementary answering affidavit, filed in this application on 05 December 2022, Mr Sneece continues to reiterate this position. He also puts up a new argument that the bills of costs for which he is liable and which led to his sequestration have been "padded"

by which he appears to mean inflated. This is notwithstanding that the bills have been taxed by the Taxing Master of each relevant court.

[68] The applicants argue that the respondent will disobey the consequences of court orders until he has achieved a result in his favour or, more accurately put, his idea of a result he will accept.

[69] On 16 January 2023 a Commercial Court Management meeting was conducted with the legal representatives of the applicants including senior and junior counsel. Mr Sneece was, as usual, unrepresented. At the meeting a date was arranged for the hearing of the application being 16 March 2023.

[70] I expressed that it may be prudent for Mr Sneece to seek legal advice in relation to the hearing given the seriousness of the allegations

and the prayer for direct imprisonment.

[71] On the day of the hearing, Mr Sneece sought to file a further supplementary affidavit. No condonation application was brought

but it was briefly explained by Mr Sneece in the affidavit that he had not had funds with which to brief an attorney and counsel until shortly before the hearing.

[72] This affidavit constituted an entirely changed and chastened position. It was drawn with the assistance of counsel including senior counsel.

[73] The belatedly filed affidavit starts off with an expression of appreciation for the encouragement of the court to seek legal assistance which was given in January 2023.

[74] Mr Sneece then expresses that the advice now received from counsel has led to something of a Damascene conversion.

[75] He admits that his past conduct, viewed objectively, is contemptuous of the Court.

[76] He explains that he was informed by an unnamed court registrar that he should bring proceedings in terms of rule 53. He says that he acted in good faith on this “advice”. He says that he believed that he “was merely proceeding to review the administrative action of the Taxing Master” and that the interests of the applicants would not be affected this review.

[77] He explains further that his convictions as to this legal position were not displaced by the correspondence from the applicants to the effect that he was in contempt of the vexatious litigation order. He seeks to convey that he was sincere in the belief that he was entitled to bring the rule 53 proceedings despite the staunch and detailed opposition of such proceedings by the applicants.

[78] He expresses the same compunction in relation to the action against Mr Kampel. He explains that he believed that because the action was not against the applicants it would not be hit by the order. He alleges also that he had held the belief that such an application would not affect the interests of the applicants as contemplated in the order. Again, he concedes his mistake.

[79] In relation to his failure to seek legal advice and permission from his trustees and the court before proceeding he claims that he did not have the resources.

[80] Mr Sneece was present in the virtual hearing of the application and represented by counsel, Derek Milne briefed by Howard Woolf

Attorneys.

- [81] At the hearing Mr Sneece was constrained, after a stand-down and consultation with his legal representatives in the midst of argument and at the courts probing finally to concede that Kuper SC's award is not a nullity, all court orders against him (whether contained in a judgment or in a registrar issued court order) are binding on him and that the vexatious litigant order was binding on him from the date on which he received notice of the section 18 order putting it into operation and effect, namely 5 March 2020.
- [82] On the basis of these formal concessions Mr Griffen conceded that he would be hard pressed to seek the direct imprisonment. He however pressed for the declaration of contempt and coercive order.

Analysis

- [83] Mr Sneece's defence of lack of understanding of the meaning of the order was made at the very last minute.
- [84] In light of the years of abuse of court process it comes too late and rings with insincerity. It is a last-minute attempt at a reprieve.
- [85] I was given no explanation as to why the affidavit was delivered on the day before the hearing. As I have said, the seriousness of the application and the fact that it was prudent for Mr Sneece to seek legal advice had been expressed by this court some three months before the hearing. The fact that Mr Sneece felt himself entitled to file this affidavit without seeking condonation or permission suggests to this Court that Mr Sneece operates on an understanding that the court processes are not binding on him and that he can push the boundaries of what is acceptable conduct with impunity. His allegations against members of the judiciary and tribunal members that have been involved in his cases reflect a disdain which adds to this general impression.
- [86] The exculpatory version in the supplementary affidavit in which Mr Sneece casts himself as a vulnerable and incompetent litigant who did not understand that what he was doing was wrong needs to be examined in light of the undisputed facts.
- [87] I will deal with each of the offending processes with reference to whether it would stretch the bounds of credibility to find that there is a reasonable doubt as to Mr Sneece's wilfulness and malice.

The rule 53 application

- [88] It is helpful to start with the terms of the vexatious litigant order. It reads as follows:

"1. The respondent Mr Barry Hylton Mr Sneece is declared a vexatious litigant in terms of section 2(1) (b) and (c) of the Vexatious

Proceedings Act 3 of 1956 for an indefinite period.

2. No legal proceedings may be instituted by the respondent against:

2.1 the applicants, or

2.2 any other person if the either of the applicants has a legal interest in the proceedings instituted against that person.”

[89] The question is whether it is at all credible that Mr Sneece could have believed that this clear and ambiguous order was subject to his interpretation.

[90] As I have said, Mr Sneece’s liability under the taxed bills of costs formed a cornerstone in the web of litigation to which the applicants had been subjected. It is this barrage of ill-conceived legal action that the vexatious litigant order was

directed at ending. It is simply inconceivable that Mr Sneece could not have understood that the rule 53 application to which the

applicants were parties constituted a legal proceeding against them or that it did not implicate their interests. His protestations to the effect that he thought that the order did not apply to these proceedings because they were the setting aside of an administrative

process makes no sense.

[91] It also makes no sense that Mr Sneece would take the advice of a registrar over that of a senior attorney. Mr Sneece could not have

been so persuaded that he was not in danger of breaching the order that he could, in good conscience, simply ignore the possibility that Mr Kampel was stating the law correctly.

[92] At best for Mr Sneece, he showed a reckless and deliberate disregard for the order of court; at worst he contrived a scheme where he would later pretend to be in ignorance as a defence to contempt proceedings. On both scenarios he is guilty of contempt.

[93] To my mind it is clear from the long history of abusive litigation that Mr Sneece is a canny businessman who has honed his skills in relation to litigation processes over the years. The affidavits and other court documents drafted by him show that he has skills and knowledge which far exceed those of a lay litigant. He also has an accounting qualification at tertiary level and has operated as a property developer and commercial landlord for some years. He is bold and opinionated in his stating of his case. He has expressly said that he will not give up fighting for what are, in his view, his rights.

The action for defamation

[94] While it is correct that the applicants were not parties to this process, Mr Sneece would have appreciated how such an action would implicate the broader litigation. It is obvious that if pressure is placed, personally, on an attorney in relation to his conduct of litigation, this is likely to have a deleterious effect on the manner in which he carries out his instructions from his clients.

- [95] Mr Sneece has shown himself to have a propensity to engage in personal attacks on those involved in the litigation. He has sought to intimidate Mr Kampel, laid criminal charges against him and reported him to the LPC.
- [96] These legal and extra-judicial processes are not launched for the purposes of obtaining legitimate redress in relation to wrongs inflicted on Mr Sneece. They are aimed directly at seeking some advantage in the litigation.
- [97] There can be no doubt that, as such, the action for defamation was instituted with malice and in a direct bid to affect the rights of the applicants in the litigation.
- [98] The action for defamation was set aside on 29 September 2022 with costs on the basis that it contravened the vexatious litigant order.

Conclusion

- [99] Mr Sneece cannot escape a finding that he has acted deliberately and maliciously in breaching the clear terms of the vexatious litigant order. This is established beyond doubt.
- [100] He has, however, conceded in extremis that he will, at last, bow to the authority of the court. For this reason, I will not grant the direct imprisonment claimed. I must state, however, that were it not for Mr Sneece's last minute capitulation, he was at risk of direct imprisonment.
- [101] The fact remains that Mr Sneece appears constantly to be on the look-out for creative ways to flout constraints of the orders which bind him. This maverick disposition means that this court must protect its authority by putting in place coercive measures.

Order

[102] I thus make the following order:

1. The respondent is declared to be in contempt of the order of Lagrange J of 16 July 2019 under case number 15236/2018 (the order).
2. In consequence of this declaration the respondent is sentenced to 60 days imprisonment which sentence is suspended on condition that he is not found to be in contempt of the order or any other order of court.
3. Mr Sneece is to pay the costs of this application on the scale as between attorney and client.

D FISHER

JUDGE OF THE HIGH COURT

JOHANNESBURG

[1] Fakie NO v CCII Systems (Pty) Ltd [2006] ZASCA 52; 2006 (4) SA 326 (SCA).

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