

SOUTH AFRICA / JUDGMENT

# Oosthuizen and Another v Olivier and Others (007585/2024) [2024] ZAGPJHC 199 (29 February 2024) [2024] ZAGPJHC 199

## COURT

South Gauteng High Court, Johannesburg

## BEFORE

N. Manoim

## CASE / FILE NUMBER

007585/2024

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REPUBLIC

OF SOUTH AFRICA

IN

THE HIGH COURT OF SOUTH AFRICA

GAUTENG

LOCAL DIVISION, JOHANNESBURG

CASE

NO: 007585/2024

In the matter between:

CORNELIUS

GERHARDUS OOSTHUIZEN

First

Applicant

BORG

TELECOM (PTY) LTD

Second

Applicant

and

MICHAEL

JOHANNES BRAND OLIVIER

First

Respondent

ABRAHAM

CHRISTIAAN SNYMAN

Second

Respondent

RUHAN

PRINSLOO

Third  
Respondent  
LIZELLE  
SNYMAN  
Fourth  
Respondent  
MOLICOM  
(PTY) LTD  
Fifth  
Respondent  
Reg.  
No. 2016/493505/07  
BORG  
TELECOM WESRAND (PTY) LTD  
Sixth  
Respondent  
Reg.  
No. 2023/771616/07  
VOX  
TELECOMMUNICATIONS (PTY) LTD  
t/a  
VOX TELECOM  
Seventh  
Respondent

## JUDGMENT

MANOIM J:

- [1] This is an urgent application where the applicants seek wide ranging relief. On 27 February 2024, after hearing argument from the parties I decided to strike the matter off the roll for lack of urgency. What follows are my reasons for doing so.
- [2] The main protagonists in this matter are the first applicant, whom I shall refer to as Oosthuizen, and the first respondent, whom I shall refer to as Olivier. Both men have a background in the telecommunications industry through different companies. In 2020 they discussed merging their respective businesses into the second applicant, Borg Telecom Pty Ltd (“Borg”). Borg was Oosthuizen’s existing company where he was both a shareholder and director. Pursuant to these merger discussions Olivier was appointed as a director of Borg. The merger never happened. Why it did not is a matter of dispute.
- [3] What is not in dispute is that Olivier was removed as a director of Borg in terms of a resolution of Borg dated 31 July 2023. But the fallout over the planned but abandoned merger sometimes euphemistically referred to in the papers now as the ‘arrangement’ is what has led to the current application. There remains a dispute over whose assets belong to who, whose customers are Borg’s or Olivier’s, inter alia. Caught up in the dispute are three

erstwhile employees, the second to fourth respondents who are variously two technicians (the second and third), and an administrator (the fourth.) But they are bit players in this larger dispute accused of being sometime facilitators of Olivier's alleged grand design to hijack Borg's business.

[4] The fifth and sixth respondent are companies controlled by Olivier through which he conducts his business. The seventh respondent, Vox Telecom has reached an agreement with Borg and no relief is sought against it and it has not participated in the proceedings.

[5] Oosthuizen became aware of the problems, for which he now seeks relief, in August

2023. It was then that an accountant, since deceased, told him that the fourth respondent had destroyed documentation belonging to Borg, and did so acting on the instructions, allegedly, of Olivier. This was apparently reported to the South African Police although Oosthuizen admits that no action had been taken thus far by the police. Nevertheless, this documentation destruction is one of the facts given to justify the present urgency of the application even though the applicants knew about it since August last year on their own version.

[6] Oosthuizen then states that in July 2023 he instructed his present attorney to investigate Olivier's actions and it was only then, he states, that to his shock, he learned that the merger had never been concluded.

[6] Oosthuizen narrative is difficult to follow. His disaffection with Olivier's actions has festered over an extended period of time. This makes it difficult to determine what he discovered and when he did so. However, it appears that his concerns became heightened in October 2023, when his attorney wrote two letters to the respondents'

attorney. The first is dated 12 October 2023. It accuses 'him' presumably a reference to Olivier, although he is not named, of hijacking Borg's business and disconnecting its clients. The attorney demands that they be reconnected or otherwise action will follow. The relief is described as urgent. A further letter addressed to the respondents' attorney followed on 18 October 2023. It refers to an earlier meeting that month which seems not to have happened.

[7] The attorney in this letter accuses Olivier of removing Borg's infrastructure. It threatens several legal actions if the issues are not resolved. The letter lacks specificity as did the earlier letter. The relevance of this is that the respondents argue that the issues now justifying urgency, were signalled already then in this correspondence, hence the applicants have delayed in seeking relief for several months.

[8] However, Mr Kapp who appeared for the applicants says these letters refer to other misconduct by Olivier, not the ones that justify the present urgency. The new conduct he argued, was the removal by Olivier or his staff of certain satellite dishes belonging to Borg from a tower. Put differently what he argued was that the reference in the October letter to infrastructure that had been removed, was not a reference to the removal of Borg's satellite dishes from a third party's tower, a fact that the applicants only became aware of they say sometime later.

- [9] The applicants do not make clear exactly when they became aware of this. The tower belongs to a company called Jasco and is situated in Hekpoort. The applicants were told by an employee of Jasco that Olivier had obtained a smart key giving him access to this site on 1 November 2023. Oosthuizen says that subsequently (no date is given) it was discovered that Borgs' equipment at this site was sabotaged. In the next sentence Oosthuizen states, it was in fact stolen. This, he argued the applicants only became aware of in December 2023. Since the application was filed on 26 January 2024, he argued that this was not undue delay in seeking relief.
- [10] But even if the discovery of the illegal removal of the satellites was only discovered then, (and the narrative is vague about exactly when) it is not clear why the applicants did not act immediately and with a specific action at the time to remedy this situation. Instead, the applicants waited till the end of January 2024, and have now sought wide ranging relief - with this act of appropriation - given only scant mention (presumably prayer 2.7 (see below) which refers to return of equipment).
- [11] The prayers for relief sought by the applicants are in the form of an interim interdict pending the institution of a legal action. I set out below their scope. The respondents are sought to be interdicted from:
- 2.1 Contacting any client who has been a client of the Second Applicant since February 2020;
  - 2.2 Informing and/or advising any of the Second Applicant's existing and prospective clients that the Respondents are in any manner whatsoever connected to the business of the Second Applicant;
  - 2.3 Representing its and/or their business in such a manner that is likely to lead members of the public to believe that such business is, or is connected with, the Second Applicant's business;
  - 2.4 Any conduct whatsoever that may cause damage to the Second Applicant's reputation;
  - 2.5 Returning all clients who's services were moved to any other legal entity from the Second Applicant since February 2020;
  - 2.6 Removing all equipment installed on any property causing harm and/or conflict to the business of the Second Applicant;
  - 2.7 Returning all equipment owned by the Second Applicant, whether installed and/or on a premises not utilized by the Second Applicant;
  - 2.8 Disconnecting any equipment utilized to interfere with the business of the Second Applicant;
- [12] It is quite clear that what the applicants have sought through their wide-ranging relief is to prevent Olivier and his entities from competing with it. Whether in due course, some of this relief can be justified is not something I have to decide now. However, it does not justify the kind of relief that the applicants now seek. The problems with Olivier's actions which justify

some of the relief, were known to them at the very latest in August last year. The destruction of the documents on which they now seek to pin urgency, occurred in August 2023. The other fact justifying urgency – the removal of the satellite dishes – occurred, at best for them, late November, or early December. This might have justified a focused urgent application then. But none was forthcoming until 26 January 2024 and then only as part of an omnibus of other relief.

- [13] In their papers the applicants make out a case for urgency in the most general terms. No specific mention is made of the urgency being premised on the two actions relied on now. This is because the applicants wanted to achieve all their relief, not just what might have been more prudent, viz the return of the satellite dishes. (Olivier in his affidavit denies having stolen the satellite dishes but strangely, in the same sentence, says if they were stolen the matter is not urgent. This a most unsatisfactory response but it does not effect the issue of urgency.)
- [14] This approach is an abuse of the urgent court process. The application is struck off for lack of urgency. As the respondents have been successful on the issue of urgency which they raised they are entitled to their costs.

ORDER:-

[15] In the result the following order is made:

1. The application is struck off the roll for lack of urgency.
2. The applicants are liable for the costs of the first to sixth respondents.

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N. MANOIM

JUDGE OF THE HIGH COURT

GAUTENG DIVISION

JOHNANNESBURG

Date of hearing: 27 February 2024

Date of Reasons: 29 February 2024

Appearances:

Counsel for the Applicant: Mr. M J Kapp

Instructed by.

Kapp Attorneys Inc

Counsel for the Respondent: Adv. J Groenewald

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Instructed by: BDK Attorneys

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