

SOUTH AFRICA / JUDGMENT

Phetla v First Rand Bank (66632/2011) [2012] ZAGPPHC 184 (21 August 2012)

[2012] ZAGPPHC 184**COURT**

North Gauteng High Court, Pretoria

BEFORE

TM Makgoka

CASE / FILE NUMBER

66632/2011

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Policy**NOT****REPORTSBLE****IN****THE HIGH COURT OF SOUTH AFRICA****(GAUTENG****NORTH, PRETORIA)****CASE****NO: 66632/2011****DATE:**

21 AUGUST 2012

In

the matter between:

NTSOPANE

ELIOT

PHETLA.....

Applicant

and

FIRST

RAND

BANKRespondent

JUDGMENT

MAKGOKA, J:

[1] This matter came before me in the urgent court. The relief sought is obscure.

The contents of the founding affidavit are strange and worrisome. The applicant seeks the following order:

1. That the respondents and the sheriff of the North and South High Court be ordered to unlock and to release the funds which have been blocked by the sheriff in the sum of R31 389.000.00 which have been held in the FNB Account no:, Church Square Branch Pretoria, to the applicant's Account no: ... FNB, Benoni Branch;
2. That the respondent or the sheriff or any person acting under his authority, command, consent and /or instructions be interdicted and restrained from disturbing or stopping and/or blocking the applicant from withdrawing the funds, whose court file under the case no:24033/11 the directives had been given for its closure;
3. That upon the respondent and /or the sheriff having unlocked the funds and having guaranteed that it will not be stopped and disturbed again, the funds be effectively and mandatorily withdrawn at any branch, by first entrance inside First National Bank, in Pretoria or Johannesburg forthwith;
4. That the sheriff be ordered and duly authorised to collect and seize the truck M.A.N white in colour and the mini truck at any pound, two sets of keys in possession of the sheriff under ref no: Nephe/3233 and hand them over to the applicant forthwith;
5. The respondent to pay the cost of this application in the event that this matter is opposed;
6. Further and/or alternative relief.

[2] The applicant's complaint throughout the application seems to be that the respondent and the sheriff have continuously 'disturbed' the withdrawal of funds from his account mentioned in para 2 above, by apparently 'locking' or 'freezing' it. The papers are not paginated, nor indexed. The sheriff, against whom relief is sought, has not been joined as a party to the proceedings. Under normal circumstances I would have struck the matter off the roll for all these, and lack of urgency. However there are disturbing features of the application, which I think, deserve mention and further action.

[3] Because the relief sought by the applicant is obscure, I would, to a great extent, quote liberally from the applicant's founding

affidavit, rather than attempt to summarise its contents. The applicant states in his founding affidavit that he obtained summary

judgment in this court against Wesbank (a division of the respondent) for R11 000 950 pursuant to an "insurance claim". The applicant states that terms of the summary judgment were as follows:

'(a) Payment of risk benefits and insurance cover over the white M.A.N Truck was confirmed;

(b) The sheriff of the high court, Mr Maartens was authorised to attach, seize and hand over the M.A.N Truck to me;

(c) The sheriff of high court was also authorised to attach the account held at FNB Bank City, Simmonds Street, Johannesburg;

(d) The West Bank Ltd was ordered to pay further costs as well as R23000 000.00 and also R1 480 000.00 to the applicant;

(e) Payment of charges of R1 350 000.00 and interest at the rate of 15.5%'

[4] I interpose here to mention that no court order was attached to the papers to sustain the allegation that summary judgment was indeed granted by this court. Pursuant to the supposed summary judgment, the applicant alleges that Wesbank deposited the amount of the alleged judgment debt into his FNB bank account No. As proof of the alleged deposit, the applicant refers to annexure "NEP5". One would, ordinarily, expect such an annexure to be proof of deposit in the form of an electronic fund transmission (EFT). It is not. Instead, it is a very unusual document. It is a purported document of this court, bearing the names of the parties under case no. 24033/11, being the same parties in the present application. It bears this court's date stamp, and was purportedly signed on behalf of 'Financial Committee: Reserve Bank (Marius) and FNB (Christie)'. It is titled:

'Affidavit in terms of section 4 of the Contingency Fees and Interest Act, No 66 of 1997 (the Act) read together with the North Gauteng High Court Practice Directive of 25th July 2011. This is proof of payment in the amount of R23 000 000-00 (Twenty Three Million Rand) into account No:....., First National Bank, Benoni Branch and it is withdrawable on Monday, 15 August 2011, at 08h30 with Mrs Christine Mckenzie'

(emphasis added)

[5] In paragraphs 11 and 12 of his founding affidavit, the applicant states the following:

'11. I submit that the Corporative Executive of the respondent and the sheriff of the above Court made it difficult for me to access and withdraw the funds in that after having made an undertaking that the funds would be in my account, they did not, (sic) being my account no. 62312015135, FNB Bank Benoni Branch. I annexed thereto a copy of the sheriff's undertaking marked as annexure 'NEP6', the contents thereof are to be read as specifically incorporated.

12. I further state that in truth and actual fact, the funds are still held at the respondent's account no. 6224483110, FNB Bank, Church Square Branch, Pretoria, which funds on numerous occasions I tried to access and withdraw but without success. I annexed thereto a copy of an affidavit deposed by the sheriff of the above court Mr Maartens marked as annexure 'NEP7', confirming that the funds are still held at the said respondent's account, the contents thereof are to be read as specifically incorporated."

[6] Annexure "NEP6" referred to in paragraph 11 of the founding affidavit, is supposedly an undertaking by the sheriff. Again it is convenient to quote in full the contents of the affidavit:

'1. I have been involved in this matter as from 28 April 2011, when I served combined summons on the defendant, and have also collected

sums of R11 950 000.00 which today is R27 388 000.00 plus, R4 101 000.00 in costs and charges. The total sum is R31 389 000.00.

2. I have been mandated by the Court to collect trucks and funds, and have also blocked the funds at Reserved Bank and FNB head office.
3. I have blocked the funds so that none other than my person (sic) may not successfully release them (sic).
4. I have therefore on the 14th of September 2011, successfully unlocked the funds and that cause of processes and verification of everything at FNB (sic) the funds are ready but I recommend that the funds be withdrawn effectively after the 15th September 2011 and that be effectively and mandatorily withdrawn on the 16th September 2011 at any branch, by first entrance inside FNB Bank and that I have no control over this process anymore and that I guarantee that it will not be stopped and disturbed again. And that I will go, if need (sic) be, and as per consent of plaintiff, to the Bank with plaintiff at any branch, Pretoria or Johannesburg.
5. I have also served application for summary judgment on the Wesbank Ltd and charges them R1, 350 000.00.
6. I have been mandated to collect and deliver two trucks as Matlala Street, Duduza, Nigel and that this delivery will take place on Friday, 16th September 2011 at 15h30 and that keys will be handed over to Mr Phetla at same address in the presence of Advocate

Dikotla.

7. I have received that payment of R3 650.00 and R6 100.00 but I recommend that my payment be R41 000.00 and I can still charge R78 000.00 on top of R41 000.00.
8. The mini truck has been collected as a result of fraudulent transactions between Leon Mange and Wesbank Ltd, Mrs Lazereen.

9. I have blocked also the transactions done by Mr Neville Melville, because my mandate given by the court was not terminated.
10. I am sorry for all the inconveniences caused by me disturbing the plaintiff for a period of five months.
- [7] Annexure "NEP7" is also purportedly a court document, bearing this court's date stamp, also allegedly signed by the sheriff Mr JG Maartens. It reads:

"1. Affidavit in terms of section 4 of the contingency fees and interest Act, no. 66 of 1997 (the Act) read together with the North Gauteng High Court Practice Directive of 25th July 2011. This is proof of freeze (sic) in the amount of R23 000 000.00 (twenty three million rand) and transferred into account no:, First National Bank, from Reserve Bank Pretoria, the frozen account number is: being a suspensive account at Reserve Bank, and the suspensive account is from First National Bank, Church Square is:..... The above confirms cancellation of the process which was done by Mrs Marius of Reserve Bank and also by Mrs McKenzie of first National Bank, Church square. I have also stopped the transaction regarding the cheque in the sum of R1 480 000.00 (one million four hundred and eight thousand rand) which will be collectable from me, Mr J G Maartens of the High Court sheriff as empowered to do so by the Sheriffs Act of 1996, on the 18th of August 2011 at 11h30 at the same time of collection of the truck at Benoni pound. The freeing (sic) transaction commenced at 10h00 am and the (sic) lasted at 12h00 pm of the 17th of August 2011.

2. I also declare under oath that M.A.N, truck 480, white in colour, was collected from Department of Justice pound at Union Building, West Gate, from Mr Micheal Cloete and has been stored at Benoni pound.
3. The whole freeing transactions (sic) shall lapse after full 8 (eight) hours and that Mr N E Phetla will be in a position to

withdraw at any FNB Branch of his choice after 8 (eight) hours.

4. I as sheriff of the High Court being duly instructed to freeze the money at Reserve Bank and also at FNB, Church Square, do hereby

undertake that I am allowed to accompany Mr N E Phetla to collect his truck at Benoni pound on the 18th of August 2011 at 11h30 am. This has been confirmed with Judge De Vos and Judge Claassen."

- [8] In paragraph 17 of the founding affidavit the applicant states the following:

"I respectfully submit that I had travelled together with my children to and from Benoni, Gauteng Province, for the purpose of withdrawing the funds and to be handed over matter (sic) as per directives dated 19/09/11, marked as annexure 'NEP 8', the contents thereof at ad para 1.2 and 1.4 are to be read as specifically incorporated".

[9] Annexure 'NEP8' referred to above is a purported court document titled 'Notice to comply with High Court Uniform Rules'. The document was supposedly served on both the Judge President and Deputy Judge President of this Division, as well as the Chief Justice of the Republic. The Chief Justice has purportedly acknowledged receipt thereof by appending his signature to the document. The document reads as follows:

'1.1 That personal appearance before a panel of judges is hereby extended to Tuesday, 20th September 2011 at 14h30;

1.2 That closure to the matter be and shall be Tuesday 14h30;

1.3 That the sheriff be arrested and remain in custody until further appearance;

1.4 That the authorised (sic) Judges Van Der Merwe, Claassen and Webster, move to Benoni to collect trucks keys and on completion of registration at

Benoni and Nigel Police Stations they must hand over the keys to Mr N E Phetla;

1.5 Mr Maartens must sign the reconciled bank statements so that Mr N E Phetla may proceed to his FNB funds withdrawal;

1.6 That Super Group having connived secretly with sheriff Maartens must receive a copy of this letter;

1.7 That the directive dated the 16th of September 2011 is hereby extended to the 20th of September 2011 at 14h30\

[10] In paragraph 20 of the founding affidavit the applicant states the following:

'I state that prior to the above incident, I had been subpoenaed or directives have been given as per annexure 'NEP9' to appear before panel of judges at ad par 3 and had signed documents for the release of the funds, but as at date (sic) I have not been in possession of my funds due to conduct of the Respondent and the Sheriff as per his undertaking that same will be made available."

[11] Annexure 'NEP9' referred to above is also purportedly a court document titled 'Directive in terms of High court Rules'. It was purportedly received and signed by the following people: Chief Justice Mogoeng Mogoeng; Ngoepe JP and Van der Merwe DJP), a

'Katherine' of the Pretoria Society of Advocates and Advocate Dikotla. It reads:

'1. Be pleased to take notice that is hereby directed by Judge President Ngoepe, Deputy Judge President Van der Merwe and (Judge) Webster that as a result of findings in this matter that funds in the sum of R27 388 000.00, have been in the FNB account and has been disturbed by sheriff Maartens, but he has done everything and that he undertakes that the funds are available for withdrawal hereby on the 16th September 2011 at any FNB branch, and the truck will be delivered also on the 16th of September at 15h00 to the address given as per High Court Rules.

2. The sheriff also given to us bundles of documents, purportedly proof of all transactions he has been doing, but this documents need to be double checked and with relevant Bank authorities and .he also handed over to Chief Justice at Constitutional Court, on Thursday the 15th September 2011 at 10h30. The Chief Justice must first sign them before released to Mr N E Phetla on the 16th September 2011 at 10h30 and closing of the matter will take place on the 20th September 2011 after MR Phetla has proved that he is satisfied with all transactions and also accepted delivery of two trucks of his address of record. The trucks must be delivered to Mr Phetla at Matlala Street, Duduza, Nigel today, 16th September, at 15h30 and to return a proof of delivery to Deputy Judge President on the 19th of September 2011 at 11h30.
3. It is further directed that Mr Phetla must still appear before the panel of judges at Court C, Justice Palace as per application by Advocate Dikotla and that appearance must take place on the 19th September at 10h30. The Bank proves(sic) given by Maartens will be handed over to Mr Phetla on the 16th September 2011 at 10h30 after double checking.
4. It is also directed by Chief Justice that the sheriff with effect from the 15th of September 2011 be stripped of all powers over the accounts of Mr Phetla held at FNB.

[13] Paragraph 21 reads as follows:

"In truth and actual fact, to the express knowledge of the respondent and the sheriff, several arrangements were made for me to withdraw the funds from any FNB branch and to collect the keys of the M.N.A Truck at a pound in Benoni, but without any success and I have been offered no explanation. To that effect I annexed thereto a copy of affidavit by sheriff of the above Court Mr Maartens for proof of final and final (sic) transactions marked as annexure 'NEP10', the contents as ad para 2 and 3 thereof are to be read as specifically incorporated to collaborate my submissions that the withdrawal of the funds, handing over of the two trucks and the closure of the file are over-due and the persistent and deliberate locking or blocking of funds and delay in handling over the two trucks to me have no basis at all".

[14] Annexure "NEP10" referred to in paragraph 21 above is a document titled 'Proof of removal and final transactions' and it is purportedly signed by the sheriff, Mr Maarten, and it reads:

"I, the undersigned,

Mr Maartens Sheriff of the North and South High Court Do hereby confirm and declare under oath as follows:

1. I am an adult male sheriff of the High Court, and have been duly mandated to go seize and collect the truck M.A.N white, and have it taken to the owner, Mr. N E Phetla, at the address given to me. I have also on the 26 August 2011 at 16h30 stopped the financial transaction, FNB Head Office, Simmonds Street, Johannesburg.
2. On the 29 August 2011 I went to Wesbank Ltd, at no. 1 Enterprise Road, Fairland, Johannesburg, to collect the truck keys under

reference number: Nephe/3233, and I did not find Mrs Lazetheem who is in possession of the key. I went there again today, 30 August 2011, at 08h00 and have the key in my possession, the truck will be delivered to Mr N E Phetla on Thursday 1 September 2011. I am meeting Mr N E Phetla on any FNB Branch as from 1 September 2011. I am meeting Mr N E Phetla on the 1st of September 2011 at 08h30 to go with him to the truck at Wesbank pound.

[15] The contents of the annexures referred to above caused me grave concern, as they appeared to be prima facie, fraudulent. Some of them were purportedly authorized by senior Judges of this court as well as the Chief Justice. As a result of this concern, I directed the applicant to give oral evidence on the origin and nature of these documents. The applicant testified that all the documents in the matter were authored by one advocate Dikotla. I also instructed the sheriff of Johannesburg West, Mr GJ Maartens to testify. In his evidence Mr Maartens denied knowledge of annexures "NEP 6" and "NEP 7", which were supposedly signed by him. He denied that the signatures appearing on those documents are his. He further testified that his son is also a deputy-sheriff of Johannesburg West. I also called Mr Maartens junior, who likewise disavowed any knowledge of the annexures. He similarly denied the signatures thereon as being his.

[16] During the course of the hearing, counsel for the applicant handed me further documents which only served to heighten my concerns. One of those documents is a purported order of this court, granted by my colleague, Webster J, in the form of a draft order, which reads:

"That the Justice Department is authorized to collect all policy documents and cheque in the amount of R16 350,000, (Sixteen million three hundred and fifty thousands rands only) and have it deposited in the following Standard Bank Account.

Mr N E PHETLA

ACCOUNT NO:

SAVINGS ACCOUNT

BRANCH BOKSBURG

[17] Another is a letter dated 3 June 2011 purportedly from the office of the Judge President, purportedly signed by Mrs. Etsebeth, the Judge President's personal assistant. It is addressed to Advocate Dikotla, in which the following is stated:

RE: APPOINTMENT WITH JUDGE PRESIDENT NGOEPE

'Your appointment with Judge President B M Ngoepe on behalf of Mr N E Phetla is scheduled for Monday 06 June 2011 at 14h30 regarding the final payment of R16 350 000.000 and the closure of the file in the North Gauteng High Court, before Judge President Ngoepe or the Deputy Judge President.'

[18] Mr Sevenster, who appeared for the respondent, handed up an electronic account profile, which showed that the applicant's account

number, which had allegedly been credited with an amount of R31 389 000, had a credit of only R647.51 as at the date of the hearing of application. The other account is said to be non-existent.

[19] No doubt the use of senior members of the judiciary in prima facie fraudulent documents should be investigated. In light thereof, I make the following order:

1. The application is struck off the roll with costs.

2. The Registrar of this court is directed to cause a copy of this judgment, as well as the transcribed record of the proceedings, to be submitted to:

2.1 the South African Police Service: Fraud Unit, for investigation into the nature and origin of the annexures to the founding affidavit;

2.2 the Chairperson of the Pretoria Society of Advocates to investigate and consider the role of Advocate Dikotla in the matter.

TM Makgoka

Judge of the High Court

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