
SOUTH AFRICA / JUDGMENT

Pitsiladi NO and Others v Ngqisha and Others (1504/2018) [2018] ZAECPEHC 41 (7 August 2018) [2018] ZAECPEHC 41

COURT

Eastern Cape High Court, Port Elizabeth

BEFORE

G G Goosen

CASE / FILE NUMBER

1504/2018

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IN THE HIGH COURT OF SOUTH AFRICA

EASTERN CAPE DIVISION, PORT ELIZABETH

CASE NO: 1504/2018

Date heard: 31 July 2018

Date delivered: 7 August 2018

In the matter between

NICHOLAS PETER PITSILADI N.O. First

Applicant

ARISTIDES PETER PITSILADI N.O. Second

Applicant

CONSTANTINE PETER PITSILADI N.O. Third

Applicant

MARIA COUTSOURIDES N.O. Fourth

Applicant

And

KHANYA NGQISHA First

Respondent

PEPSI JAMES Second

Respondent

ECONOMIC FREEDOM FIGHTERS Third

Respondent

JUDGMENT

GOOSEN, J.

[1] The applicants seek a final interdict restraining the respondents from organising, facilitating, promoting, encouraging or inciting any unlawful activities on the applicants' business premises. An interim interdict was granted by this court on an urgent basis on 24 April 2018. The incident giving rise to the interim interdict occurred on 21 April 2018. Following a further incident on 16 June 2018, the applicants filed a supplementary affidavit. The first respondent has filed an answering affidavit.

[2] The applicants are the Trustees of the Athina Trust which conducts business as a retailer of liquor products. It conducts this business

at multiple stores which are branded as Prestons Liquor Scores (hereinafter referred to as "Prestons"). These are located throughout Port Elizabeth, as well as in other parts of the Eastern Cape.

[3] The first and second respondents are members of the third respondent, which is a registered political party. The third respondent is represented in the National Assembly, several provincial legislatures, Metropolitan and other local councils. The first respondent is a member of the local leadership structure of the third respondent. He deposes to an affidavit in that capacity.

[4] It is necessary to set out, in some detail, the events giving rise to the present application. The facts are essentially common cause. The sequence of events commenced on 13 April 2018. On that day an email written by the first respondent on behalf of the third respondent, was sent to the email address of Prestons. The first respondent stated that the Nelson Mandela Bay EFF (the third respondent) had received reports regarding the exploitation of workers at the Prestons Walmer store, as well as complaints regarding alleged misleading promotional prices. The first respondent requested a meeting to address the issues.

[5] On 16 April 2018 Mr Wesley Rundle (hereafter "Rundle"), the applicants' Human Resources Manager, replied. He thanked the first respondent for raising the matter stating that the management would, together with the trade union, investigate the matter. This solicited an immediate response. In it the first respondent stated that "we are not satisfied with your response". He indicated that the third respondent insists on a meeting. The email goes on to state:

I would like to make you aware that we take these matters very seriously and we hope you will grant us an opportunity to address

them through a meeting. If you are declining to meet with us, you will then give us no choice but to mobilise our members and occupy

Preston Stores as a demonstration of our unhappiness. We will also use media to expose the conduct of Preston Stores.

[6] Rundle replied to this email on 18 April 2018. The response is lengthy. Only the salient points, which are not in issue, need be referred to. They are that the management of Prestons was not unwilling to meet. What was required was an official letter from the third respondent as well as details regarding the alleged complaints, so as to enable them to be investigated. It was pointed out that the applicants operate two stores in Walmer and that it requires the store to be identified. The applicants state that the statements regarding occupation of the stores constitute intimidating tactics designed to pressure the applicants into meeting with the EFF.

[7] To this the third respondent replied on 18 April 2018 as follows:

We are not going to engage on a tedious exercise of sending long emails back and forth. All you have said could have been articulated in a meeting. From what I gather, Preston Stores has declined to meet with the EFF.

Tomorrow I will email you an official letter from the EFF NMB Region stating our resolution to occupy Preston Stores due to failed attempts to meet with Preston Store officials. Occupation will be very legal. We will even invite the Police upon our occupation as we are a law-abiding political party.

[8] On 19 April 2018, Rundle again wrote to the first respondent. He stated that:

By continuing to make threats of conduct that would be unlawful, you are making it clear that in reality you do not actually want to have a meeting with us, even though we are prepared to meet with you.

We repeat that we have not refused to meet with you.

Why will you not comply with our lawful and legitimate pre-meeting requests?

[9] The first respondent, despite an earlier statement that no purpose would be served by exchange of emails, addressed two further emails to Rundle on 19 April 2018. In the first he states:

This is to place on record that our request to meet with the officials of Preston Stores has been declined.

Due to our request being declined, the EFF will now mobilise its members in order to occupy Preston Stores. The occupation will be ongoing until Preston Stores is persuaded to meet with the EFF leadership.

[10] In the second email, the first respondent states that a date and time should be set for a meeting. He further states that the decision to occupy Prestons stores emanates from the EFF's view that the applicants are not prepared to meet with it.

[11] On 20 April 2018, Rundle wrote to the first respondent stating that continued threats to occupy the stores are intolerable and called for an apology. He reiterated the request for details regarding the alleged complaints.

[12] A still further exchange of emails followed on 20 April 2018, with neither party altering the stance adopted. On 20 April 2018, the applicant's attorneys wrote to the first respondent. They stated that the threatened occupation is unlawful; that such

occupation would disrupt the applicants' business, be prejudicial and cause harm. They required an undertaking by Monday 23 April that such threats would not be carried out, failing which the applicants would approach the court for an interdict.

[13] The first respondent replied stating that no threats had been made. It records in the email that:

We will simply walk into Preston Store as any customer and make our complaints.

[14] In a further email the first respondent wrote to the applicant's attorneys as follows:

And please go tell your client to look up the word occupy in the dictionary. He will be surprised that it is not associated with any threats. Simply means a filling up of space. So go and tell your client that we will enter into Preston as customers in our numbers and fill up space and then asked for a manager. Very legal. We will then persuade Prestons to have a meeting with EFF. Very legal. So you can see that even though we are Africans, we are very civil.

[15] On 21 April 2018, approximately 25 persons wearing EFF party regalia entered the applicants' store at 121 Main Road, Walmer. They proceeded to block the aisles and access to the tills. They sang songs and clapped their hands. They made no attempt to purchase any items. According to the Prestons staff present, including the manager, Mrs Eatwell, customers were intimidated. Members of the Atlas Security company were summoned as were members of the South African Police Services. Neither Atlas personnel, nor the Police took any steps to remove the persons from the store. Some members of the third respondent demanded to speak to a director of the applicants. Mrs Eatwell telephoned the first applicant. The first applicant spoke to one of the third respondent's members on the phone. He indicated that the meeting could not be held until the other applicants had agreed and that this would not occur until 23 April. The first applicant stated that the store would close. The members of the third respondent then left the store. They however, remained in the vicinity of the store for some time after it had closed.

- [16] Both the first and the second respondent were present during the incident on 21 April 2018. According to Rundle, video footage recorded during the incident records the second respondent as playing a leading role in the events. It records too that he stated that the third respondent intends to close down all Prestons stores until their demands are met.
- [17] On Monday 23 April 2018 the applicants launched the present application. The matter came before me on 24 April 2018. The first and second respondents appeared in person. An interim order was granted with the return date being 26 June 2018.
- [18] What followed the granting of the interim interdict on 24 April 2018 need only be recounted briefly. On 2 May 2018, the first applicant and Mr Heshu, a business associate, met with the first and second respondents. At that meeting certain matters were raised by the first and second respondents. The first applicant undertook to take these up with the second to fourth applicants. The first applicant stated that they would revert to the third respondent.
- [19] On 8 May 2018 Rundle, on instructions of the applicants, wrote to the first respondent. The email records the issues discussed. It stated that all of the issues raised (the details of which need not be set out)[1] could have been addressed by the employees and / or their union representatives. It states that there was no necessity for the EFF, as a political party, to become involved. The letter records that the applicants will seek a final interdict to restrain unlawful conduct on the return date.
- [20] On Saturday 16 June 2018, at approximately 12h10, the area manager of Prestons, Mr Owen, received a telephone call from Mrs Eatwell, the manager of the Walmer store. She informed him that a man wished to speak to him on the phone. This man, who was at the store, did not give his name. He said that he was from the Walmer Community Forum. He asked why an interdict had been obtained by the applicants. He said that Prestons workers had certain issues which the EFF had taken up on their behalf, but that Prestons management had not responded to these. Owen said he would take the matter up with the senior management.
- [21] According to Eatwell, and other staff members who deposed to supplementary affidavits, there were several men in the store at the time. They placed a large amount of liquor on the counters at the tills. In one instance, the sale was rung up by the cashier. The person who was at the till, however, said he would rather go to another liquor store to make his purchase. Two other till points were engaged in similar manner. At one, a man sought to purchase some snacks. When these were rung-up he walked away back into the store. The effect was that other customers could not utilise the till points to make their purchases, thus disrupting the normal course of business of the applicant.
- [22] Earlier that morning Mrs Eatwell received a telephone call from a person who said she was a reporter on the Herald newspaper. She stated that she had received a call from the EFF to inform her that they were en route to the store. When asked for an interview, Mrs Eatwell declined.

- [23] During the incident described above, members of the SAPS arrived. Mrs Eatwell showed them a copy of the interim order which had been obtained. They informed her that they could not act on it since none of the persons blocking the tills was wearing any clothing that could identify them as EFF members or supporters. Mrs Eatwell accordingly went to the SAPS charge office nearby to lay a charge of trespassing. When she returned the persons had left.
- [24] As stated above, the first respondent deposed to an answering affidavit. At the hearing of the matter, the first respondent appeared in person, representing both himself and the other respondents.
- [25] The answering affidavit does not place in dispute the circumstances which gave rise to the incident of 21 April 2018. There is no denial of the detailed allegations made by the applicants in respect of the correspondence or the events of 21 April 2018.
- [26] The first respondent states that the third respondent received a report from workers and community members relating to “exploitation” and “misleading promotional prices” on 13 April 2018. The affidavit refers to workers of “Spar”. In argument, counsel for the applicant submitted that this was a telling slip since similar actions had been carried out in relation to that business. The first respondent however stated that this was merely an error.
- [27] It was admitted by the respondents that following receipt of the complaints, they had pursued an attempt to meet with the applicants as set out in the correspondence referred to above.
- [28] In relation to the events of 21 April 2018, the respondents stated only that the “engagement with management” was peaceful. The first respondent admits that he initially denied being present in email correspondence addressed to the applicants. He did so because he was daunted by the court process.
- [29] The first respondent admits that a meeting took place on 2 May 2018. He states that the applicants agreed to set up another meeting once they had investigated the issues raised. When, on 8 May, he received an email from Rundle communicating the outcome of the applicants’ investigations, he considered that the applicants had reneged on the undertaking to meet again. The respondents communicated this to community members and the workers of Prestons. He states that the community members were informed that “they would need to deal with the issues themselves”.
- [30] The first respondent confirms that the respondents were informed on 16 June 2018, that community members had made their way to Prestons “in an attempt to speak with the management and also to purchase some few items”. He states that the respondents however

had nothing to do with the incident at the store on that day. The respondents assert, in opposing the final interdict, that the incident on 16 June 2018 was unrelated to the matters taken up by them 21 April and that “the community members” were acting as individual customers who were entitled to raise complaints. It was submitted that to grant a final interdict would “instill fear upon my limits in regard to raising certain issues in future with the store management”.

- [31] The requirements for granting a final interdict are well established. The applicant must establish a clear right; an infringement of that right; an injury actually suffered or a reasonable apprehension of such harm; and that there is no other satisfactory remedy available to it.
- [32] There are, as is apparent from the factual averments made by the parties, no material disputes of fact. Significantly the sequence of events giving rise to the incident on 21 April 2018, and what occurred on that date, are not in dispute. The correspondence clearly establishes a threat by the respondents to mobilise the third respondent’s members to “occupy” the premises of applicants’ businesses in the event that no meeting is held. That threat was carried out on 21 April 2018.
- [33] The first respondent, both in his affidavit and in argument, sought to suggest that the “threat” was not unlawful. As I understood the position adopted by the respondents, it was that they were entitled to insist upon a meeting with Prestons management, and were also entitled to pressure management to agree to such a meeting. The “occupation” by “filling the space”

amounted to no more than applying legitimate pressure on the management to meet with the third respondent.

- [34] The first assumption made by the respondents is wrong in law. The applicant is under no legal obligation to meet with the third

respondent in relation to matters which bear upon contractual employer-employee relations or which bear upon matters affecting

consumer interests. The third respondent cannot demand a meeting as of right. Matters concerning employer-employee relations are

regulated by an employment contract and by the provisions of the Labour Relations Act[2]; the Basic Conditions of Employment Act[3] and a raft of related labour legislation. This legislation gives recognition to employee organisations and trade unions and provides a framework and set of procedures and mechanisms by which disputes are to be resolved. In similar vein the Consumer Protection Act[4] seeks to promote and protect the rights and interests of consumers. It provides mechanisms by which complaints are to be investigated and resolved and such resolutions enforced against business entities.

[35] While the third respondent may, if it wishes, mobilise its supporters in protest against infractions of the law, it is however obliged to do so lawfully. The legal framework referred to above forms part of the body of law, sanctioned by the Constitution, which organs of state, public and private entities and persons are obliged to adhere to. Political parties equally are obliged to comply with the rule of law. It is not open to political parties, or any person for that matter, to ride roughshod over the established legal process by engaging in unlawful conduct.

[36] The undisputed facts establish that the respondents acted unlawfully on 21 April 2018. The “occupation” of the applicant’s

business premises in Walmer clearly interfered with the applicants’ normal course of business: aisles were blocked; doors were closed and customers prevented from going about their normal business.

[37] The email addressed by the first respondent to the applicants on 19 April contained a clear and unequivocal threat that the applicants’

business premises would be “occupied” and that such “occupation” would continue until the first respondent’s

demands were met. The nature of what was envisaged was demonstrated by the events of 21 April 2018. This was not merely the “filling

of space”, as the first respondent would have it. Rather it involved a deliberate disruption of the business activities of the applicants.

[38] There can be no doubt that the applicants enjoy a clear right to conduct their business. Such right is plainly breached when individuals or a group of individuals conduct themselves in the manner described above and as occurred on 21 April and 16 June 2018.

[39] In order to obtain a final interdict the applicant must establish, in addition to a clear right and its breach, a reasonable apprehension

of harm in the event that the order is not granted. In *Diepsloot Residents and Land Owners Association and Others v Administrator, Transvaal and Others* 1993 (3), SA 49 (T) at 60 E – F, it was stated, in relation to the apprehension of harm, that:

On this particular aspect it is clear that there is a difference between proving on a preponderance of probabilities that “a reasonable apprehension of injury” exists and proving on that preponderance that “an injury will be incurred”. The reasonable apprehension of injury is one which a reasonable man might entertain being faced with the facts which the court finds to exist on a balance of probabilities.

[40] In this instance, the clearly stated intention of the third respondent set out in the correspondence prior to 21 April was to continue with its conduct until its demands were met. This was repeated by the second respondent at the incident on 21 April. This latter allegation is undisputed.

[41] What followed the granting of the interim order is also significant. The first respondent states that they were dissatisfied with what was conveyed in the correspondence of 8 May 2018. They communicated this to the “community” and told the “community”

to take the matter up themselves. What followed was the incident of 16 June 2018. The respondents do not state that they sought to discourage such conduct. The effect was that the applicants’ business was again disrupted. In my view, a reasonable person would entertain a reasonable apprehension that further harm may result if the respondents are not restrained.

[42] In *Performing Right Society Ltd v Berman and Another* 1966 (2) SA 355 (R) at 357F – G, it was stated that:

It seems to me that the statement of the learned authors that the Plaintiff must show positively that the Defendant is likely to

continue his infringement, refers to the type of case where the prima facie position is that the infringement has occurred once and for all and is finished and done with; and if, the Defendant has given a bona fide undertaking not to repeat the infringement, that is an important factor which will influence the court in refusing an interdict.

[43] In this instance, the respondents have given no undertaking not to continue with the infringing conduct or even to discourage persons

from such conduct. On the contrary, the stance adopted by the respondents in relation to the events of 16 June 2018 is to state

that they have withdrawn, leaving the matter to “the community” to address on their own. In light of what occurred on 16 June 2018, it cannot be said that such harm as has already occurred is now “finished and done with”.

[44] The applicants are not possessed of any other suitable alternative remedy by which the harm flowing from the respondents’ unlawful conduct may be remedied. It follows from this that the applicants have established all of the requirements for final relief. They are accordingly entitled to confirmation of the rule nisi. In regard to costs, the applicants sought a punitive costs order. In my view such order is warranted having regard to the conduct of the respondents.

[45] In the result the following orders will issue:

1. The respondents are interdicted and restrained from organising and/facilitating and/or promoting and/or encouraging and/or inciting

any unlawful activities on any of the Applicants' business premises where the Applicants trade as a liquor retailer under the trade name "Prestons", which activities shall include, but not be limited to:

1.1 interfering with the access to and egress from any of the Applicants' business premises by members of Applicants' staff or members of the public who are lawfully entering or egressing Applicants' premises;

1.2 inciting or participating in protest demonstrations on any of the Applicants' business premises or in close proximity thereto (within 100 m of the perimeter of any such business premises);

1.3 entering any of the Applicants' business premises as individuals save for the bona fide purpose of purchasing products;

1.4 disrupting, obstructing or in any manner interfering with the business activities of the Applicants, more particularly the interference in disruption and obstruction of customers who lawfully enter upon Applicants' premises for the purposes of purchasing products sold by the Applicant;

1.5 in any manner interfering with the business activities of the Applicants' business;

1.6 disrupting, obstructing or in any other manner interfering with the ordinary functioning of the Applicants' business by means of intimidation or threatening behaviour towards customers of the Applicants' business and Applicants' staff;

1.7 threatening to disrupt Applicants' business activities and/or threatening to close premises from where Applicants conduct their business activities;

1.8 closing and/or threatening to close the doors to Applicants' premises such as to prevent customers from entering the premises for lawful purposes;

1.9 acting in any unlawful manner which occasions damage to the Applicants' business, more particularly, loss of revenue by virtue of customers being turned away unlawfully from entering Applicants' business premises.

2. Directing the South African Police Service to remove any person or member of the third respondent who in breach of this Order acts unlawfully as set out in paragraph 1 above.

3. The respondents are ordered to pay the costs of the application jointly and severally on the scale as between attorney and client.

G. G. GOOSEN

JUDGE OF THE HIGH COURT

Appearances:

For the Applicants

Adv. A. Beyleveld SC

Instructed by Minde Schapiro & Smith

For the Respondents

First Respondent (in person)

[1] The issues raised all concerned matters relating to working conditions and benefits of the employees. No matters concerning alleged consumer complaints are noted in the list of issues raised. The content of the email recording what was discussed at the meeting was not placed in dispute by the respondents.

[2] Act 66 of 1995

[3] Act 75 of 1997

[4] Act 68 of 2008

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