

SOUTH AFRICA / JUDGMENT

Rabie and Another v Public Protector and Another; Rabie v Mkhwebane and Others (56029/2018; 83971/2019) [2021] ZAGPPHC 501 (3 August 2021) [2021] ZAGPPHC 501

COURT

North Gauteng High Court, Pretoria

BEFORE

Janse van Nieuwenhuizen

CASE / FILE NUMBER

56029/2018; 83971/2019

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IN THE HIGH COURT OF SOUTH AFRICA(GAUTENG DIVISION, PRETORIA)

REPUBLIC

OF SOUTH AFRICA

(1)

REPORTABLE: NO

(2)

OF INTEREST TO OTHER JUDGES: YES/NO

(3)

REVISED

DATE:

3 AUGUST 2021

Case

Number: 56029/2018

In

the matter between:

VIRGIL
HUMPHREY RABIE
First
Applicant
ANTHEA
BERENICE RABIE
Second
Applicant
And
THE
PUBLIC PROTECTOR: ADVOCATE B MKHWEBANE
ERNST
AND YOUNG ADVISORY SERVICES (PTY) LTD
Respondent
Intervening
Respondent
AND
Case
Number 83971/2019
VIRGIL
HUMPHREY RABIE
Applicant
And
ADVOCATE
BUSISIWE MKHWEBANE(THE PUBLIC PROTECTOR)
First
Respondent
MR
JOHN STEENHUISEN (THE DEMOCRATIC ALLIANCE)
Second
Respondent
MINISTER
PRAVIN GORDHAN(DEPARTMENT OF PUBLIC ENTERPRISES)
Third
Respondent
ADVOCATE
SHAMILA BATOHI(THE NATIONAL PROSECUTING AUTHORITY)
Fourth
Respondent
THE
SOUTH AFRICAN POLICE SERVICE – SAPS(THE HAWKS)
Fifth
Respondent
THE
SPECIAL INVESTIGATING UNIT (SIU) -DR WELLS/MR NEAVE
Sixth
Respondent
THE
LAW SOCIETY OF THE NORTHERN PROVINCES
Seventh
Respondent

ERNEST
AND YOUNG (EY)
Eighth
Respondent
MR
BRIAN DAMES (PREVIOUS CEO AT ESKOM)
Ninth
Respondent

JUDGMENT

JANSE VAN NIEUWENHUIZEN J

- [1] This matter pertains to two applications. Firstly, an application for the review of the Public Protector's Report dated 30 June 2014 and secondly an application for declaratory and other relief. The two applications were consolidated in terms of an order granted by Davis J.
- [2] Ernest and Young Advisory Services (Pty) Ltd ("EY") joined the review application as an intervening respondent and is the only respondent opposing the application.
- [3] In the application for declaratory relief, EY was cited as the eighth respondent and is similarly the only respondent that opposes the application.

Introduction

- [4] The first applicant in the review application and the only applicant in the application for declaratory relief, Virgil Humphrey Rabie ("Rabie") was previously employed at Eskom as Chief Information Officer in the Corporate Services Division and reported directly to the Managing Director of the Division, Dr S Lennon ("Lennon"). In 2010 Lennon received anonymous information that Rabie was responsible for the irregular appointments of several employees and contractors.
- [5] After an internal investigation into the allegations, Lennon decided to appoint EY to conduct a detailed forensic investigation into the allegations.
- [6] EY finalised its investigations and presented a report to Eskom on 4 August 2010. Having studied the report, Eskom decided to institute disciplinary proceedings against Rabie and Rabie was charged with misconduct on 12 August 2010.
- [7] During August 2010 Rabie submitted a "whistle-blowing" document to Eskom's CEO, Mr Dames and the Minister of Public Enterprises, alleging violations by Lennon of the Eskom Conflict of Interest Policy.

[8] Rabie's disciplinary hearing proceeded and on 28 February 2011

the chairperson of the disciplinary enquiry, Advocate Van As, recommended that Rabie be dismissed with effect from 31 March 2011.

[9] On 8 March 2011 Rabie lodged an internal appeal against the findings

and recommendations of Advocate Van As. Advocate Gerrit Pretorius SC was appointed to chair the appeal and on 20 April 2011, Advocate

Pretorius issued an appeal finding recommending that Rabie's dismissal be upheld and that the date of the dismissal be extended to 31 May 2011.

[10] On 4 May 2011 Rabie lodged a complaint of unfair dismissal with the CCMA. Rabie denied that he was guilty of misconduct and alleged that even if he was guilty, his dismissal was done in an unfair and inconsistent manner. The inconsistency pertained to the treatment between himself and Lennon who was also investigated for similar improprieties. This perception of inconsistent treatment has been the driving force behind all Rabie's legal and other challenges, which includes the present two applications.

[11] On 27 May 2011, Dames appointed EY to investigate the allegations in Rabie's "whistle-blowing" document against Lennon. Rabie alleged that Lennon's appointment of a consultant, K Jarvis was improper. EY prepared a report pertaining to the allegations dated 29 August 2011 ("the full report"). A summary of the key-findings of the report ("redacted report") dated 11 October 2011 was also prepared and presented during the

proceedings in Rabie's matter in the CCMA.

[12] The proceedings in the CCMA were settled between Rabie and Eskom on 15 February 2012 in terms of a written Settlement Agreement which provided for the termination of the employment relationship between the parties. In terms of the agreement Rabie inter alia received an amount of R 712 500, 00.

REVIEW APPLICATION

Facts

[13] In the review application that was served on the Public Protector on 18 August 2018, Rabie, as first applicant and Berenice Anthea Rabie, his wife as the second applicant, claim the following relief:

"1. Declaring that, in investigating and reporting on

"Maladministration, Misconduct and Unlawful Conduct of Eskom and its 2 appointed agents Cliffe Dekker Hofmeyer (CDH) and Ernst & Young (EY)" from June 2011 – June 2014, and in the report dated 30 June 2014, and ignoring requests and additional evidence in consideration for a review up till June 2017, the Public Protector failed in its duties under Sections 6 and 7 of the Public Protector Act and Section 182 of the Constitution.

2. Reviewing and setting aside, and declaring unconstitutional, unlawful and invalid the Public Protector's Report and actions of Adv. C. H. ("Stoffel") Fourie dated 30 June 2014.
3. Compel the Public Protector to comprehensively investigate the complaints lodged by 3 parties viz., Virgil & Bernice Rabie and including its Labour Practitioner, and report on each of the material allegations levelled at Eskom, CDH and EY.
4. Compel the Public Protector to investigate and address the allegations against the Public Protector's Adv C. H. Fourie in terms of a 'white-wash' performed and whereas it is alleged that he had been complicit in concealing the unlawful conduct of Eskom, CDH and EY, with requisite disciplinary action if required or appropriate.
5. Considering remitting the above investigations to investigators or entities outside the span and control of the Adv. C. H. Fourie, or to the SIU because of the real or perceived conflict that exists within the investigative unit of the Public Protector, and completing such investigation within a period of 2 months".

[14] Mrs Rabie did not participate in the hearing and Rabie appeared in person.

[15] Although the relief claimed in prayer 1 is formulated as declaratory relief, the relief is aimed at the report of the Public Protector dated 30 June 2014, which Rabie seeks to be reviewed and set aside in

prayer 2 of the notice of motion.

[16] The application therefore is and remains a review application and will be dealt with as such.

[17] The application stems from the complaint that Rabie lodged with the offices of the Public Protector on 6 June 2011. The report prepared by Advocate Fourie in respect of the investigation of the complaint, forms the subject matter of the relief claimed in prayer 2 of the Notice of Motion.

[18] In the report dated 30 June 2014, Advocate Fourie summarised the allegations contained in Rabie's complaint as follows:

"7.22 ...The essence of the allegations made in your complaint was that Dr Lennon:

7.22.1 Was instrumental in the sourcing, awarding of contracts and payments made by Eskom to Mr Jarvis, long standing acquaintance of his;

7.22.2 Failed to disclose his relationship with Mr Jarvis for 13 months;

7.22.3 Had been instrumental in fabricating evidence and instructed Ernest and Young to submit false statements in investigating misconduct allegations against you, for which it was paid;

7.22.4 Colluded with the chairpersons of the disciplinary and appeal hearings (a senior and junior advocate of the Johannesburg Bar), which resulted in your dismissal."

[19] In view of the settlement reached with Eskom on 15 February 2012, some eight months later, it is clear that the allegations in subparagraphs 7.22.3 and 7.22.4 have fallen by the wayside.

[20] The only allegations remaining for Advocate Fourie to investigate after 15 February 2012 were, therefore, those pertaining to the alleged misconduct of Lennon.

[21] In this regard Advocate Fourie stated the following in his report:

“7.26 Dr Lennon was called to testify on 15 February 2012 and after about two hours of his testimony, you again proposed a settlement. You explained to me during our meeting that it was at this stage and after listening to Dr Lennon’s testimony that you realized that the allegations of impropriety that you made against him were “unfounded and malicious”, hence your willingness to settle the matter.”

[22] Subsequent to the consultation cited by Advocate Fourie supra, Rabie changed stances and alleged that the report in respect of the allegations of Lennon’s improprieties that was introduced as evidence in his matter before the CCMA, was not the full report and that the full report was concealed (the concealed report”). In the concealed report, according to Rabie, Lennon was found to have been complicit in improprieties.

[23] This prompted Rabie to lodge a complaint with the South African Police Service. Advocate Fourie dealt in full with the events following Rabie’s about-turn. The allegation of the concealed report was investigated and Advocate Fourie came to the following

conclusion:

“14. We could find no substantive evidence in your submissions and the documents obtained from you and Eskom of any “concealed report”. The seven page summary of key findings of the Ernest and Young report that was, according to you, deceitfully presented to the CCMA does not in any material respect differ from the “full report”. Its findings and conclusions are also supported by the evidence obtained during the investigation. The mere fact that you may not agree with the conclusions reached by the investigators does not necessarily mean that their views were deceitful, fraudulent or misleading. It is a matter of opinion.”

[24] In view of the aforesaid finding, the Public Protector closed the investigation into the complaints lodged by Rabie.

[25] Rabie was not satisfied with the findings in Advocate Fourie’s report and addressed an email to the Public Protector, Advocate Madonsela. The relevant portion of the email reads as follows:

“Good day Ms Madonsela

I have noticed that communique from your office had been sent by the very Adv. Stoffel Fourie whom I complained about.

The news is tragic, pathetic and totally preposterous.

My only resource now is to escalate this issue about your office to the Constitutional Court since my Constitutional Rights had been totally violated by your office. Furthermore your office had not performed and executed as per their mandate. In my opinion, I have a total vote of no confidence in you and your office.

The following appears perfectly acceptable, perfectly okay to the Public Protector as attached, and it seems that the Public Protector embrace maladministration and criminality.”

[26] In a letter dated 28 July 2014, Advocate Madonsela responded as follows:

“Having carefully considered all the matters you have raised as referred to in the documents, submissions and information presented to me by you and Eskom, I have to inform you that I concur with the views expressed and the conclusions made by Adv Fourie in his said letter. The matter is accordingly regarded as finalized.”

Point in limine

[27] EY raised a point in limine pertaining to the non-compliance with section 7(1) of the Promotion of Administrative Justice Act, 3 of 2000 (“PAJA”), which section provides that any proceedings for judicial review must be instituted without unreasonable delay and no later than 180 days after the date of the applicant becoming aware of the action and the reasons therefore.

[28] Advocate Fourie’s report is dated 30 June 2014 and one can assume from Rabie’s email to Advocate Madonsela that he was aware of the report when he forwarded the email to her. The date when the email was forwarded is not clear from the papers, but it is clear that Advocate Madonsela’s response was forwarded to Rabie on 31 July 2014.

[29] For present purposes, I will accept that the time “started ticking” on 31 July 2014.

[30] The review application is dated 18 August 2018, some four years later. Although the point of lateness was pertinently raised in EY’s answering affidavit, Rabie has failed to seek condonation for his non-compliance with the mandatory provisions of section 7(1).

[31] In the result, EY’s point in limine must succeed and the review application is dismissed due to non-compliance with the provisions of section 7(1) of PAJA.

DECLARATORY RELIEF

[32] Rabie launched this application on an urgent basis to be heard in the urgent court on 19 November 2019. The application did not proceed in the urgent court and was, as indicated supra, consolidated with the review application.

[33] Rabie cited the following respondents:

First respondent: Advocate Busisiwe Mkhwebane (Public Protector)

Second Respondent: Mr John Steenhuisen (Democratic Alliance)

Third Respondent: Minister Pravin Gordhan (Department of Public Enterprises)

Fourth Respondent: Advocate Shamila Batohi (National Prosecuting Authority)

Fifth Respondent: The South African Police Service (Hawks)

Sixth Respondent: Special Investigation Unit (SIU) – Dr Wells/Mr Neave

Seventh Respondent: Law Society of the Northern Provinces

Eighth Respondent: Ernst and Young (EY)

Ninth Respondent: Mr Brian Dames (previous CEO at Eskom).

[34] The following relief is claimed by Rabie:

“2. In accepting the ‘Whistle-Blowing’ from 4 separate parties from 2010 – 2019, concerning Eskom and alleged acts of Maladministration and Misconduct of two of its managing Directors, a Declaratory order that the Public Protector had:

2.1 Not executed on its obligations and duties mandated and prescribed by the Public Protector Act and the Constitution and in particular in its duties under section 6 and 7 of the Public Protector Act and Section 182 of the Constitution

2.2 Allowed for my Constitutional Rights to be violated from the period 2011-2019, and failed to address or remedy it at various intervals such as 30 June 2014, 30 June 2014 – 2017, August 2018, 22 January 2019 – 30 April 2019, and on or before 24 October 2019

2.3 Failed to apply proper professional and business etiquette and conduct in never reverting and updating on the status of the 2nd and 3rd Whistle-Blowers pertaining to their complaints on the Eskom matters

2.4 Allowed for monies to be extorted to the tune of over R 800 000 by EY from Eskom and thus failing to protect the sovereignty of the state by allowing theft of state funds and by multinationals/s to participate in such acts. This is a violation of the Foreign Corrupt Practices Act where EY had criminally colluded with Government officials to extort funds from Eskom and allowed by the PP.

2.5 Failed to comply with a Court Order directing it to investigate and report on Eskom ‘Whistle-Blowing within 3 months from January 2019 – 30 April 2019’ and violated the court order of 22 January 2019 in that it suspended the investigation for a period without giving notice and reasons, and is thus in contempt of court and whereby I had to amplify my intent in September 2019 to take the Public Protector to court for Contempt of Court and obtaining an Enforcement Order.

2.6 Through its delays and failure to properly address the ‘whistle-blowing’ of 2010 – 2017, it allowed for my Protected Disclosures to be made public and my identity revealed to Eskom and its agents, therefore violating my protected rights

2.7 Allowed and assisted Eskom and/or its agents to litigate against me in order for them to stop the investigation, and by disclosing my identity to Eskom and its agents

2.8 Failed to make a declaration and statement after there had been prima facie evidence of criminality by Eskom and/or its agents from 2010 – 2017 (also articulated herein with the attached Founding Affidavit and irrevocable proof), and failing to accept such re-assignment on its own volition from Aug 2018 – 24 October 2019 and mandate

not to be guided by any court order, and making such declaration to the parties with a vested interest

2.9 Failed to act against Adv Stoffel Fourie an internal employee of the Public Protector who was presented all the irrefutable evidence and who performed a ‘white-wash’ and who had been complicit in covering up the criminality purported by Eskom and its agents

3. Furthermore, in its failure to take a stand against criminality, the Public Protector had not opposed on or before 22-24 October 2019 an Urgent Court application by EY wanting to stop the investigation into

its alleged criminal behaviour at Eskom and neither did it put in any appearance at court. The Public Protector also indicated to me thereafter and within the last few days that it will not oppose the EY’s Rescission Application which is aiming at completely stopping any investigation into its criminal behaviour for good. This had necessitated this Urgent Application because the Public Protector is allowing for injustices, for extortion of funds from Eskom, for theft of funds, for maladministration, misconduct and criminality to have taken place, and be taking place now and in future. This is leaving Eskom and the state vulnerable to continued extortion, fraud, corruption and other sinister behaviour and criminality of abuse of power and influence over Eskom employees and its power over the State.

4. Because of the failure of the Public Protector for now over 9 years to properly address the complaints it had accepted originally, and by it failing in its constitutional duties and obligations, an order is sought remitting investigations to the SIU and the NPA since the Public Protector cannot be trusted, alternatively allowing the Public Protector to take a stance and prove itself within 3 months.

5. An order directed at Mr. Brian Dames (the previous Eskom CEO) and admission from him on whether he had been informed by EY (or by Eskom’s Madonsela or CDH’s Patel) that Lennon had transgressed and whether he had been directed to take disciplinary action against Lennon concerning the investigation he assigned to EY from May 2011 – August 2011, and whether he had been party to the creation of the ‘Redacted’ Report of 14 October 2011.”

Relief

[35] The relief claimed by Rabie contains various factual allegations which overlap and will, for the sake of convenience be dealt will accordingly.

Prayer 2.1

- [36] The sections relied upon by Rabie in this prayer is section 6 of the Public Protector Act, 23 of 1994 that makes provision for the reporting of matters to the Public Protector, section 7 that deals with the investigation of such matters and section 182 of the Constitution of the Republic of SA, 1996 that sets out the functions of the Public Protector.
- [37] The declaration sought in prayer 2.1 is couched in general terms and without detailing which specific duty or function the Public Protector failed to perform. In the result, it is legally untenable to grant the relief claimed herein.

Prayers 2.2, 2.3 and 2.6

- [38] The relief claimed in these prayers is premised on Rabie's "Whistle-Blowing" document concerning violations of Eskom's Managing Director Lennon, which was submitted to Eskom's CEO, Mr Brian Dames, the Minister of Public Enterprises and the Public Protector at the end of 2010.
- [39] The document, according to Rabie had been used in his Internal Appeal hearing before Advocate Pretorius SC and during the CCMA hearing from April 2011 to February 2012. Advocate Fourie also based his 30 June 2014 report on the document.

- [40] From the above, the following emerges:

40.1 the "Whistle-Blowing" report referred to by Rabie prayer 2.2 is nothing more than the document setting out Rabie's complaints against Lennon that was received by the Public Protector on 6 June 2011 and which formed the basis for the investigation conducted by Advocate Fourie;

40.2 the investigation culminated in Advocate Fourie's report dated 30 June 2014 and Advocate Madonsela's letter to Rabie dated 28 July 2014;

40.3 Rabie was and still is not satisfied with the result and has unsuccessfully endeavoured to set the report aside.

- [41] In the result, Rabie has exhausted his legal remedies pertaining to the investigation and outcome of his allegations in the "whistle-blowing" report in launching the review application.
- [42] The time periods mentioned by Rabie after the 30 June 2014 report pertains to endeavours by Rabie to have his complaints re-investigated by the Public Protector and various other institutions i.e. the Public Protector, the National Prosecuting Authority and the Hawks.
- [43] The "new" information Rabie alleges he presented to the Public Protector pertained to the same complaint that was investigated and finalised by the Public Protector in 2011 and as a result suffers the same fate.

Prayer 2.4

- [44] Rabie's allegation in prayer 2.4 "that monies were extorted to the tune of over R 800 000 by EY from Eskom", does not form part of the report of Advocate Fourie.
- [45] Rabie's complaint lodged with the Public Protector on 6 June 2011 was somewhat different. In his complaint lodged with the Public Protector Rabie alleged that the contents of the "full report" differed substantially from the contents of the "redacted report" and therefore there must be another "concealed report".
- [46] Mr Fourie did deal with this allegation in his report as set out supra.
- [47] The present allegation pertains to the amount that was allegedly paid by Eskom for the forensic investigation and report by EY in respect of the allegations pertaining to Lennon's conduct. In support of this relief, Rabie stated the following:

"I have witnessed how the Eskom CEO had paid over R 800 000 for a forensic investigation to the same Eskom Agent (EY) to investigate

'whistle-blowing' that I had reported to Eskom which deliberately had been a perfunctory investigation, such investigation

misleading the Eskom CEO and concealing the transgressions of an Eskom Managing Director, thus deceitful charging Eskom for work it had not done. Monies to the tune of at least R 800 000 was thus extorted from Eskom and is constituted as 'theft' under false pretences,..."

- [48] The full report prepared by EY was submitted to Dames under a covering letter dated 29 August 2011. It is a comprehensive document consisting of 88 pages and contains a detailed analysis in respect of each of the allegations against Lennon. The allegation by Rabie that Lennon's dealings with and appointment of Jarvis was improper is dealt with in the report from page 29 to page 72. In the concluding paragraph EY dealt with each allegation and states the following "Based on the evidence made available to us in this regard, the allegation made appears to be unfounded".
- [49] Save for the fact that Rabie does not agree with the conclusions contained in the report, it is difficult to fathom on what factual basis he alleges that the investigation was "perfunctory", that the investigator "misled the Eskom CEO", that the investigator "concealed Lennon's transgressions" and that EY "deceitfully charged Eskom" for work it has not done.
- [50] To the contrary and on a mere perusal of the report, the exact opposite is true. There is no merit in the relief claimed in this prayer.

Prayers 2.5, 2.7, 2.8 and 3

- [51] In order to make sense of the allegations contained in these prayers, it is apposite to have regard to the litigation history that preceded this application.
- [52] The review application instituted by Rabie was not opposed and Rabie obtained an order in the unopposed motion court on 22 January 2019, in the following terms;

“1. That the report by the PP dated 20 June 2014 is hereby reviewed and set aside.

2. That the PP is hereby ordered to investigate the alleged maladministration of Eskom and its appointed agents, EY and CDH within 2 months of the date of this order.
3. That the PP is ordered to file the aforesaid report within 1 month on Mr and Mrs Rabie.
4. The PP is to pay the costs of this application.”

[53] EY became aware of the order and during July 2019 launched an application to intervene and for the rescission of the order.

[54] The Public Protector was not prepared to agree to the suspension of the 29 January 2019 order, pending the finalisation of the rescission application, which prompted EY to launch an urgent application interdicting and restraining the Public Protector from conducting any investigation pursuant to the order.

[55] The Public Protector did not oppose the application and filed a notice to abide by the decision of the court. Rabie was cited as a respondent in the application and opposed the relief sought therein. On 24 October 2019 Collis J granted the interim relief.

[56] The aforesaid order led to the present application being launched by Rabie.

[57] The rescission application was also not opposed by the Public Protector, but was also opposed by Rabie. The application was heard by Davis J and on 12 March 2020 an order was granted rescinding and setting aside the 22 January 2019 order.

[58] There is no duty in law on the Public Protector to get embroiled in litigation. The decision by the Public Protector not to oppose the interim interdict and rescission applications simply entailed that Rabie’s review application was properly adjudicated upon, i.e. after having had regard to the facts and submissions presented by both parties.

Prayer 2.9

[59] The allegation that the Public Protector failed to act against Advocate Stoffel Fourie who performed a “white-wash” and had been complicit in covering up the criminality purported by Eskom and its agents, pertains to the report by Advocate Fourie which was the subject matter of the unsuccessful review. Save for the fact that Rabie does not agree with the findings by Advocate Fourie in his report, Rabie has failed to provide any facts for the allegation that

the report was a “white-wash” or that Eskom and its “agents” are guilty of a criminal offence.

Prayer 4

[60] In terms of section 2 of the Special Investigation Units and Special Tribunals Act, 74 and 1996 only the President of the Republic of South Africa may, by proclamation in the Gazette establish a Special Investigation Unit to investigate a matter. The court does not have such powers.

[61] The same applies to the National Prosecuting Authority, which was established by the National Prosecuting Authority Act, 32 of 1998. Section 20(1) confers the power to institute and conduct criminal proceedings on the prosecuting authority and reads as follows:

“The power, as contemplated in section 179(2) and all other relevant sections of the Constitution, to —

- (a) Institute and conduct criminal proceedings on behalf of the State;
- (b) carry out any necessary functions incidental to instituting and conducting such criminal proceedings; and
- (c) discontinue criminal proceedings,

vests in the prosecuting authority and shall, for all purposes, be exercised on behalf of the Republic.”

[62] In the result, the relief claimed in prayer 4 is bad in law and stands to be dismissed.

Prayer 5

[63] The relief claimed herein is for a mandatory interdict. In order to succeed Rabie needs to allege and proof:

63.1 a clear right;

63.2 an injury actually committed or reasonably apprehended; and

63.3 the absence of any other satisfactory available remedy.

[See: Setlogelo v Setlogelo 1914 AD 221]

[64] In order to establish a clear right Rabie has to prove on a balance of probabilities the right which he seeks to protect.

[65] The right appears to be founded in Rabie’s ongoing dissatisfaction with the EY full report.

[66] Insofar as an injury actually committed or reasonably apprehended is concerned, it is difficult to grasp from the facts contained in the various affidavits deposed to by Rabie, what injury he has suffered or reasonably apprehended to suffer insofar as the report is concerned.

[67] Lastly Rabie did not only have satisfactory available remedies, but indeed perused these remedies in lodging a complaint with the Public Protector, the Hawks and the National Prosecuting authority.

[68] In the result, Rabie did not satisfy the requirements for a mandatory interdict and the relief claimed herein stands to be dismissed.

Costs

[69] EY requested that costs should be awarded against Rabie on an attorney and client scale. I am of the view that a normal cost order should be granted in the review application.

[70] The declaratory application is, however, different. Rabie has made serious allegations of extortion and theft in his papers, without an iota of evidence to support these allegations.

[71] In expressing my dismay at Rabie's aforesaid conduct, I will grant a special cost order against him in the declaratory application.

Order

[72] In the result, I grant the following order:

1. The application under case number 56029/2018 is dismissed with costs, which costs include the costs of two counsel.
2. The application under case number 83971/2019 is dismissed with costs on an attorney and client scale, which costs include the costs of two counsel.

N. JANSE VAN NIEUWENHUIZEN

JUDGE OF THE HIGH COURT OF SOUTH AFRICA

GAUTENG DIVISION, PRETORIA

DATE HEARD PER COVID19 DIRECTIVES: 4th of June 2021.

DATE DELIVERED PER COVID19 DIRECTIVES: 3rd of August 2021

APPEARANCES

For the Applicant (In person):

Mr V.H. Rabie

Counsel for the Eighth Respondent:

Advocate A. Govender and

Advocate M. Clark

Instructed by:

Webber Wentzel

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