

SOUTH AFRICA / JUDGMENT

Rhino Fuels (Pty) ltd and Another v Maybach
Oil and Gas (Pty) ltd and others (351/2024)
[2024] ZAMPMBHC 16 (22 February 2024)
[2024] ZAMPMBHC 16

COURT
Mbombela High Court, Mpumalanga

BEFORE
Bhengu

CASE / FILE NUMBER
351/2024

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HIGH
COURT OF SOUTH AFRICA
MPUMALANGA
DIVISION, MBOMBELA (MAIN SEAT)
Case
No.: 351/2024

REPORTABLE: NO
OF
INTEREST TO OTHER JUDGES: NO
REVISED

DATE: 22/02/2024
In

the matter between: RHINO
FUELS (PTY) LTD
FIRST
APPLICANT
RHINO
PETROLEUM (PTY) LTD
SECOND
APPLICANT
And
MAYBACH
OIL AND GAS (PTY) LTD
FIRST
RESPONDENT
NTANDO
ZWELIHLE MHLONGO

SECOND RESPONDENT
IMPI
NGWENYA
THIRD
RESPONDENT
MEMBERS
AND SUPPORTERS OF
THE
FIRST AND SECOND RESPONDENT
FOURTH
RESPONDENT
THE
STATION COMMANDER OF THE
SOUTH
AFRICAN POLICE SERVICES
MALELANE
FIFTH
RESPONDENT
MINISTER
OF POLICE
SIXTH
RESPONDENT

JUDGMENT

CORAM: BHENGU AJ

- [1] This is an urgent application in terms of Rule 6(12) of the Uniform Rules. The Applicants seeks an interim interdict against the First to Fourth Respondents from unlawfully threatening, intimidating and harassing the Applicants, its employees and or its suppliers in relation to the Applicant's business operations. There is no relief sought against the Fifth Respondent and the Sixth Respondent except for the Fifth Respondent to enforce the order against the Respondents. Reference to the Respondents refers to the First and Second Respondent.
- [2] The First and Second Respondents opposed this application and filed a counter application for an order interdicting the Applicants from operating a petroleum wholesale business without a licence in terms of section 2A(1)(b) of the Petroleum Act 120 of 1877. No urgency is claimed in relation to the counter application and as a such, the counter application is referred for Judicial Case Management.

Background

facts

[3] The Applicants and the Respondents are competitors in the petroleum business. The dispute between the parties emanates from the

Respondents' belief that the Applicants are operating a petroleum wholesale business without a licence. The Respondents are

disgruntled with the low prices that the Applicant's charges for petroleum products as it affects their competitive advantage in the petroleum market. It appears that there have been previous engagements between the parties relating to the business operations

of the Applicants which will not be referred to for purposes of this matter.

Applicant's case

[4] In summary, in the Applicants' founding affidavit deposed to by Mr Kruger (a Director of the Applicants), it is averred that on 24 January 2024, Mr Kruger had a meeting with Mr Mhlongo (the Second Respondent and also a Director of the First Respondent). Mr Mhlongo accused the Applicants of trading as a wholesale petroleum business without a licence thereby making it difficult for the Respondents to retain their clients. He informed him that he will stop his business from operating. Mr Mhlongo told Mr Kruger that if he does not adhere to his demands, he could use violence if same is needed. According to Mr Kruger, he perceived the utterances from Mr Mhlongo to be threats against him and his business.

[5] On 26 January 2024, the Respondents visited the Applicants' petroleum depot uninvited in three vehicles without number plates. It is alleged that the Respondents threatened the Applicant's employees with physical violence and ordered the employees to close down the depot. Further allegations were levelled against the Applicants that they were conducting an illegal business without a license to trade. The Respondents further demanded that the Applicants pay them money in order that they may leave the premises and stop their intimidating tactics. The Applicants then called the South African Police Services (SAPS) Malelane for assistance, but they were told by the police that the police require a court order in order to intervene. To try and defuse the situation, Mr Kruger agreed to meet with Mr Mhlongo on 29 January 2024. He then went to the police station to make a statement but was unable to do so on 26 January 2024.

[6] On 28 January 2024, Mr Kruger filed a charge of intimidation with the SAPS Malelane with case number: CAS 64/1/2024[1]. A statement made to the police by Mr Nyambi[2], one of the Applicant's employees stated that:-

“On Friday 2024-01-26 at approximately 12h00, I was on duty at Charmont Mine ...as a diesel attendant when I noticed a group of about eight African male who came with three bakkies and one of them said I must stop operating. They ordered me to phone my boss or supervisor which I did... I became frightened and had to stop”.

- [7] After opening the case with the SAPS, Mr Kruger was afraid to meet Mr Mhlongo on 29 January 2023 as promised at the previous meeting for fear of retribution for opening a case against him. He was no longer feeling safe around the Respondent because they had already threatened him with violence. He then decided to cancel the meeting with Mr Mhlongo. In response to the cancellation of the meeting, Mr Mhlongo sent a series of WhatsApp messages[3] and calls directed to Mr Kruger. In one of the WhatsApp messages, Mr Mhlongo wrote:-

“You making a very big mistake, I will show you, you called the police? I'm with the police now. Let's see what's going to happen. (11h21)

“You buying smuggling fuel you killing my market and you operating without a Wholesale License and you don't even have the EIA, you stuffing the market around for everyone. Trust me if you think I'm playing games, you're going to regret all this. Believe me, I don't lose” (12h02)

“10:00. On Monday at Wimpy Ferrera Street” (19H09)

- [8] On 29 January 2024, Mr Mhlongo tried to call Mr Kruger and when he did not answer his calls, he then sent him another WhatsApp message

complaining that he is making him an idiot. Mr Kruger then decided to block Mr Mhlongo's number on his phone.

- [9] The Applicants thereafter installed further boom gates and posted guards at the premises to ensure that the Respondent does not gain access.

- [10] On 30 January 2024, the Respondents gained access to the Applicants' premises by driving through the boom gate. The Respondents were accompanied

by members of the SAPS[4]. Whilst at the premises, they intimidated and harassed the Applicants' employees and forced them to cease operations. They threatened that physical violence would follow should their request not be adhered to. The employees of the Applicants vacated the business premises, and the Respondents took control of the business premises. The Applicants again called the SAPS for assistance, and they were advised to obtain a court order. The Applicants had to call a private security company, Impi Consulting, to assist in removing the Respondents from the depot. A confirmatory affidavit deposed to by Mr Mark Haarhoff, of the private security company is filed in support of this allegation[5]. Screenshots of a video footage shows people entering the Applicant's business premises.

- [11] Mr Kruger avers that the Applicants perceives the threats of the Respondents to mean that the respondents would proceed to physically

harm the Applicants' employees and infrastructure. The Applicant's employees are seriously scared, threatened and intimidated by the actions of the Respondents. They are afraid that the actions of the Respondent will escalate, that the infrastructure

of the Applicants and the lives of its employees are in danger. The Applicants then launched this urgent application for an interdict

against the Respondents.

Respondent's case

[12] The Respondents deny any acts of harassment, intimidation or threats of physical violence against the Applicants and its employees. The Second Respondent's (Mr Mhlongo) version of events as stated in his answering affidavit is as follows:

"Firstly, I contacted the deponent on the 20th January 2024 with the purpose of discussing the illegal operation...On the 24th January 2024 we met and discussed...He then undertook to contact me on the 25th January 2024 for feedback i.e. producing evidence that the business operations are legal. When he failed to keep his undertaking...On 26 January 2024, I reported the matter to the SAPS. The SAPS and I reported to the Applicants' premises. The SAPS spoke to the Applicants employees' and requested to speak to their boss. I then

received a call from the deponent, and he asked me that I should not involve the police as we can resolve this matter amicably... He proposed that we should meet on the 29th of January 2024. However, when he did not show up on the 29th of January 2024, I then sent a WhatsApp message complaining of his conduct. On 30 January 2024, I decided to go look for him at his premises together with the SAPS".

[13] According to the Respondents, the Applicants are conducting an illegal wholesale petroleum business which is a criminal offense in terms of Section 2A(1)(b) of the Petroleum Act. The Respondents referred to an email from the Department of Mineral Resources and Energy ("DME") dated 01 February 2024 which confirms that there is a pending application for a license lodged by First Applicant on 31 January 2024 and that there are no records of the Second Respondent's license. The Respondents contend that the Applicants are trying to legitimize their illegal business through a Court order and that the Court cannot issue an order protecting an illegal business.

[14] Counsel for the Respondents argued that even if the tone of the WhatsApp message from Mr Mhlongo dated 26 January 2024 seemed as if he was angry, he submitted that, however, there is no indication in the WhatsApp message that he intended to cause harm to the Applicant's employees. All that the Respondent wanted to see was the Applicants complying with the relevant pieces of legislation. He further submitted that, Case Law dictates that, the Court should not be hasty to make a finding of hate speech or violence. He asked the Court to look at the context when those messages were sent, including the cordial discussion between the parties on 24 January 2024.

[15] According to the Respondents, their conduct is well within the law. They averred that it is unlikely that Applicants would have suffered physical harm in the presence of the members of the SAPS. In reference to the screenshot of a Video footage referred to in Annexure FA7 in the Applicants' affidavit, The Respondent avers that "the said photograph depicts people having a conversation in a civilized manner"[6].

[16] The Respondent contends that the Applicants have failed to establish a clear right in the absence of a trading licence. They dispute the validity of the wholesale licence submitted by the Applicants with their replying affidavit and averred that even though the

registration number of the business is the same, but the licence was issued in favour of a different company, Rumpet Oils. They aver that if the Applicants' claims were true that the Respondent took over the premises of the Applicants, then the correct remedy for the Applicants would have been a spoliation application to restore possession.

Urgency

[17] Rule 6(12)(b) of the Uniform Rules provides that, "In every affidavit or petition filed in support of any application under paragraph (a) of this subrule, the applicant must set forth

explicitly the circumstances which is averred that render the matter urgent and the reasons why the applicant claims that applicant could not be afforded substantial redress at a hearing in due course."

[18] The Applicants averred in its founding affidavit that the actions of the Respondent are continuous and raises a serious threat of irreparable harm to the Applicants, its employees and its business infrastructure. According to the Applicants if they were to bring this application in the ordinary course, opposed trial dates were only available approximately more than 7 months from now and he believes that by which time the "threats of the respondent will, in all likelihood, have culminated in serious harm for the applicants, its employees and infrastructure". The Applicants submitted that they will accordingly not receive substantial redress if the matter is not heard as one of urgency.

[19] The Respondents disputed that the matter was urgent. They contended that the urgency is self is self-created and that its intended to silence the Respondents and indirectly trying to legitimise the Applicant's illegal business through a Court Order. The Respondents avers that they were only having a peaceful engagement with the Applicants and denied any threats of violence or physical harm. They asked the Court to view the application as an abuse of the Court process and that the application be struck off with costs on an attorney and client scale.

[20] This matter concerns an alleged violation of the human right that is protected in our Constitution. I therefore find that any alleged threat to this right should be afforded a hearing by the Court.

Analysis

on the merits

[21] In paragraph 4 to 6.2 of the Applicants' Notice of Motion, the Applicants are seeking that a Rule Nisi be issued calling upon the Respondents to show cause why the interim interdict should not be confirmed on the return date. Respondents counsel argued that the Rule Nisi procedure does not apply in this case because there is no pending litigation between the parties and the operation of the interdict will have a final determination of the relationship between the parties. The Respondents have been duly served with the Application. The Respondents have filed their answering affidavit and the Applicants have also filed their replying affidavit. I fully agree with this argument. The next question then for determination is whether the Applicants have made out a case for a final interdict.

[22] Harms[7] provides that an interdict is final if the court order is based upon a final determination of the rights of the parties to the litigation. The relief sought in this matter is a prohibitory interdict and if granted, it will have a final effect on the Applicants and the Respondents. As such the requirements of Uniform Rule 6(12)(c) do not apply in casu, I am of the view that the matter is ripe for determination for a final interdict in that, even though the Applicants had sought an interim order, however, in their founding Affidavit[8] the requirements addressed are for a final interdict.

[23] In *Setlogelo v Setlogelo*[9] the Court set out the following requirements for a final interdict, and these have since become trite in our law:-

- a) A clear right on the part of the applicant.
- b) An injury actually committed or reasonably apprehended.
- c) The absence of any other satisfactory remedy available to the applicant.

Clear right

[24] The Applicants averred that the business and its employees have a clear right not to be prevented from executing its business operation and economic endeavours. They have a right to conduct business unhindered by the unlawful conduct of the Respondents. The applicants' employees have the right not to have their space of work, from which

they sustain their families unlawfully blockaded and shut down by the Respondent. Counsel for the Applicants in his heads of argument

submitted that the Applicants and its employees have the right to freedom from violence in terms of section 12(1) of the Constitution.

[25] The Respondents argued that the Applicants do not have a clear right for purposes of an interdict because they do not hold a wholesale licence to operate a petroleum business and that the law does not countenance unlawful conduct.

[26] In order to establish a clear right, the Applicants have to prove on a balance of probability, facts upon which in terms of substantive law establish the right relied on.[10] Our country is a democratic state founded on the advancement of human rights guaranteed in our Constitution and the rule of law. The Applicants' right to freedom and security is guaranteed in our constitution and constitute a clear right. The argument by the Respondents that a clear right is determined by means of possession of petroleum wholesale licence is clearly misplaced. Whether or not the Applicants are in possession of a wholesale license or not cannot be a requirement for them to protect their rights entrenched in the constitution. As averred by the Respondents, the petroleum business is regulated by the Petroleum Act under the Department of Minerals Resources and Energy. Any noncompliance with the Act should be dealt with by the relevant bodies.

An injury actually committed or reasonably apprehended.

[27] In *NCSPCA v Openshaw*[11], the SCA held that an interdict is not a remedy for a past invasion of rights but is concerned with present or future infringements. The Court further held that:-

“An interdict is appropriate only when future injury is feared. Where a wrongful act giving rise to the injury has already occurred, it must be of a continuing nature or there must be a reasonable apprehension that it will be repeated”.

[28] The Applicants averred that they fear for the safety of its employees and destruction of their infrastructure, there is also a real possibility that there will be a significant loss in the Applicants revenue. It

is not in dispute that the Respondents sent all those WhatsApp messages to the Applicants. The Respondents' counsel submitted

that Case Law dictates that, the Court should not be hasty to make a finding of hate speech or violence. He submitted that just because the tone of the message is angry, it does not necessarily mean that violence or harassment is to ensue.

[29] The Respondent denies that he has threatened the Applicants or used any violence against the employees. He described what had been taking place as “people having a conversation in a civilized manner”. This shows a lack of insight on the part of Respondents as to how the Applicants perceived his conduct. *Chief Lesapo v North West Agricultural Bank*[12] the Constitutional Court held that:-

“The right of access to court is indeed foundational to the stability of an orderly society. It ensures the peaceful, regulated and institutionalized mechanisms to resolve disputes, without resorting to self-help. The right of access to court is a bulwark against vigilantism, and the chaos and anarchy which it causes. Construed in this context of the rule of law and the principle

against self-help in particular, access to court is indeed of cardinal importance.”

[30] I mention this judgment taking into account that the Respondents are trying to make sure that the Applicants stop operations because they believe that they do not have a Wholesale licence. It is important to note that the Respondents have visited the premises of the Applicants twice already to demand that he produces a valid licence or close the

business. This function that the Respondents have taken upon themselves is a function that falls within the regulatory body in the petroleum industry. This is tantamount to the Respondent taking the law into its own hands which should not be allowed in a country governed by a rule of law.

[31] The Respondents further argued that each time that they attended to the Applicants’ premises, they were in the company of the members of the SAPS. What is puzzling in this scenario, is that there is no proof that the Respondent opened any case against the Applicants at the Police Station, yet the police accompanied them to the Applicants’ business premises without a search warrant. In the absence of a case docket opened or search warrant to enter and search the premises of the Applicants amounts to harassment. The members of the police services must always operate within the confines of the law.

[32] Further, the fact that the Applicants had to call private security as confirmed by Mr Mark Haarhoff, to remove the Respondents from the premises clearly shows the Respondents conduct cannot be associated with people having a conversation in a civilized manner. The WhatsApp messages sent to the Applicant’s qualifies as a threat, for example the Respondent states that “you are making a big mistake, let’s see what is going to happen”. Any reasonable person receiving this kind of a message will not perceive this message to be a peaceful engagement between two business persons.

[33] In view of the above, I’m satisfied that the Applicants have successfully proved on a balance of probabilities that there is reasonable apprehension of harm.

No alternative relief

[34] It was argued on behalf of the Respondents that the Applicants have already reported the matter to the police and that they need to allow the police to do their job. The Applicants averred that there is no alternative remedy available as they have tried to reason with the Respondents and there is no indication that the Respondents have any intention to desist from their current unlawful activities.

[35] I take note of the fact that the Respondents' visit to the Applicants premises on 30 January 2024 was after the Applicants had opened a charge of intimidation against the Respondent. The Respondent seemed unmoved by the fact the Applicants have opened a case of intimidation against him. I therefore do not see how reporting the case to the police will assist the client in preventing further altercations with the Respondents. I'm therefore satisfied that the Applicants have no other alternative remedy that will sufficient redress for the infringements.

Conclusion

[36] The SCA in *Liberty Group Ltd & others v Mall Space Management*[13] the Court held that once the Applicant has established the three requisite elements for the grant of an interdict, the scope, if any, for refusing relief is limited and that there is no general discretion to refuse relief.

[37] In the result, it is ordered that: -

1. In terms of rule 6(12) of the uniform rules of court, the matter is allowed to be dealt with as an urgent application.
2. The First, Second, Third and fourth Respondents are interdicted and restrained from unlawfully barricading, obstructing, interfering

with, threatening, intimidating, harassing or assaulting the Applicants, its employees and labourers, its subcontractors and suppliers and all other personnel (collectively referred to as the protected persons) in relation to the work of the applicants known as Strathmore Farm, Kaalrug Road, Malelane, 1320, Chamotte Mine (hereinafter "the Applicants' premises) comprising of bulk and retail sales in particular that:

2.1 Interdicting and restraining the First, Second, Third, and Fouth Respondents, collectively and individually, and any persons or organizations acting through, under or in concert with or acting in solidarity with them from entering or interfering or otherwise disrupting or causing the cessation of the business and commercial endeavors by the Applicants.

2.2 Interdicting and restraining the First, Second, Third and Fourth Respondents, collectively and individually and any persons or organizations acting through, under or in concert with or acting in solidarity with them from entering, or blockading or obstructing the site of the Applicants at the business premises of the Applicants or congregating within 500 metres of the business premises of the Applicants or within 500 metres of any of the Applicants' employees working on the Applicants business premises.

2.3 Interdicting and restraining the First, Second, Third and Fourth Respondents, collectively and individually and any persons or organizations acting through, under or in concert with or acting in solidarity with them from preventing the protected persons from entering or leaving the business premises of the Applicants and from holding hostage or taking captive the business premises of the Applicants.

2.4 Interdicting and restraining the First, Second, Third and Fourth Respondents, collectively and individually and any persons or organizations acting through, under or in concert with or acting in solidarity with them from encouraging or directing any persons to commit the acts as set out in any part of this application or order.

2.5 Interdicting and restraining the First, Second, Third and Fourth Respondents, collectively and individually and any persons or organizations acting through, under or in concert with or acting in solidarity with them from in any way disrupting the Applicants' business or economic endeavours.

2.6 Interdicting and restraining the First, Second, Third and Fourth Respondents, collectively and individually and any persons or organizations acting through, under or in concert with or acting in solidarity with them from tampering, damaging or destroying any of the Applicants' property or infrastructure at the Applicants' business premises.

2.7 Ordering the Fifth and Sixth Respondents to ensure compliance with the terms of this order by the First, Second, Third or Fourth Respondents or persons or organizations acting through, under or in concert with or acting in solidarity with them.

2.8 Interdicting and restraining the First, Second, Third and Fourth Respondents collectively and individually and any persons or organizations acting through, under or in concert with or acting in solidarity with them from intimidating, harassing, verbally abusing, or threatening the Applicants, their employees as well as any clients or subcontractors at the Applicants' business premises.

3. Directing and ordering the Fifth and Sixth Respondents to:

3.1 Give effect to the relief set out above.

3.2 Prevent any of the Respondents from breaching the terms of this order.

3.3 Disburse, remove, eject, or arrest persons who act in any unlawful manner and/or contrary to this order and/or act in a manner as to contravene or reduce the effectiveness of this order.

3.4 If necessary, utilize the service of the Public Order Policing Unit of the SAPS to maintain law and order in the event of the Respondent's breach of this order.

JL BHENGU

ACTING JUDGE OF HIGH COURT (MPUMALANGA)

For the Applicants: Adv HF Fourie

Cronje De Waal - Sikhosana Attorneys

For the Respondents: Adv T Ngwenya

Yethu Lushaba Attorneys

Date Heard : 06 February 2024

Date Delivered : 22 February 2024

- [1] Police Docket, Case number: CAS 64/1/2024, Annexure FA 11
- [2] Statement by Mr Nyambi, Annexure FA 11 p3
- [3] Respondents' answering affidavit, Annexure NZ4
- [4] Screen shots of a video footage showing the police, Respondents and other unknown males at the Applicants depot, Annexure FA7
- [5] Confirmatory affidavit by Mr Mark Haarhoff, p102-104 Applicants' founding papers
- [6] Respondent's answering affidavit, p19
- [7] D Harms Civil Procedure in the Superior Courts (2022 – Service Issue 75) para A5. 2
- [8] Applicant's Founding Affidavit, para 88 - 101
- [9] Setlogelo v Setlogelo 1914 AD 221 at 227
- [10] D Harms Civil Procedure in the Superior Courts (2022 – Service Issue 75) para A5. 3
- [11] NCSPCA v Openshaw [2008] ZASCA 78; 2008 (5) SA 339 (SCA) at para [20]
- [12] Chief Lesapo v North West Agricultural Bank and Another [1999] ZACC 16; 2000 (1) SA 409 (CC); 1999 (12) BCLR 1420 at para 22
- [13] Liberty Group Ltd & others v Mall Space Management CC [2019] ZASCA 142, 2020 (1) SA 30 (SCA) para 22

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