

SOUTH AFRICA / JUDGMENT

Schoeman and Another v Big 5 Security Company Wihon 25 CC and Others (7093/2024) [2024] ZALMPPHC 96 (6 August 2024) [2024] ZALMPPHC 96

COURT

Limpopo High Court, Polokwane

BEFORE

Gaisa

CASE / FILE NUMBER

7093/2024

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REPUBLIC

OF SOUTH AFRICA

IN

THE HIGH COURT OF SOUTH AFRICA

LIMPOPO

DIVISION, POLOKWANE

CASE

NO: 7093/2024

(1)

REPORTABLE: YES/NO

(2)

OF INTEREST TO THE JUDGES: YES/NO

(3)

REVISED

In

the matter between:

FRANCIS
SCHOEMAN
First Applicant
MESSINA BIG 5 ALARMS
AND CCTV
t/a 1ST DEFENCE ARMED
RESPONSE
Second Applicant
(Registration Number:
2020/511835/07)
and
BIG 5 SECURITY COMPANY
WIHON 25 CC
First Respondent
(REG. NO:
2002/086248/23)
PIET VAN DER
WESTHUIZEN
Second Respondent
STEPHANUS
GEYER
Third Respondent

JUDGEMENT

GAISA AJ

INTRODUCTION

- [1] This is an urgent application brought by the Applicants seeking relief against the Respondents relating to a security services business. The matter involves somewhat complex factual and legal issues surrounding the sale of a business, contractual obligations, and allegations of interference with business operations.
- [2] The Applicants seek the following main relief:
- 2.1. an order enforcing a sale of shares agreement dated 1 July 2022;
 - 2.2. the return of certain GPRS radios;
 - 2.3. an interdict prohibiting the Respondents from contacting the Applicants' clients.
- [3] The First and Second Respondents oppose the application. The Third Respondent has not filed any opposing papers.

BACKGROUND

- [4] On 1 July 2022, the First Applicant entered into a written sale of shares agreement to purchase the Second Applicant (then known as Messina Big 5 Alarms and CCTV) from the Third Respondent. The Third Respondent was then a director of both the Second Applicant and the First Respondent (Wihon 25 CC).
- [5] A key term of the agreement was that the First Respondent would "exclusively" provide monitoring services for the Second Applicant's clients at a specified rate. The Applicants argued that the agreement also provided for the transfer of 50 GPRS monitoring radios to the Second Applicant upon full payment of the purchase price.
- [6] In March/April 2023, the Second Respondent purchased the First Respondent from the Third Respondent.
- [7] On 2 July 2024, the First Respondent sent a letter to the Applicants terminating all services between the parties effective 1 August 2024.
- [8] The Applicants allege that since April 2023, the Respondents have been interfering with their business operations, contacting their clients directly, and removing GPRS radios. They claim this conduct breaches the sale agreement and is causing irreparable harm to their business.
- [9] The Respondents deny any unlawful conduct. They contend that the First Respondent is not bound by the sale agreement, that the GPRS radios belong to the First Respondent, and that they have lawfully terminated their business relationship with the Applicants.

ISSUES FOR

DETERMINATION

- [10] The key issues for determination are:

- 10.1. whether the matter is urgent;
- 10.2. whether the 1 July 2022 sale agreement binds the First Respondent;
- 10.3. whether the Applicants have proven ownership of the GPRS radios;
- 10.4. whether the Applicants have established grounds for an interdict;
- 10.5. the admissibility and weight of certain evidence; and
- 10.6. costs.

URGENCY

- [11] The Applicants contend that this matter is extremely urgent due to alleged ongoing interference with their business and the impending termination of services on 1 August 2024.

[12] Regarding the purpose of rule 6(12), Norman Manoim[1] said:

“The judicial system, not unlike the private individual, does not take kindly to people who push to the front of the queue. The doctrine of urgency was developed and encapsulated in the rules of court in order to allow those for whom the wait in the queue would not be worth it unless they push in front, to do just that without attracting dirty looks from those behind them.”

[13] The test for urgency is well-established. In *Luna Meubel Vervaardigers (Edms) Bpk v Makin*, [2] Coetzee J said:

“Practitioners should carefully analyse the facts of each case to determine, for the purposes of setting the case down for hearing, whether a greater or lesser degree of relaxation of the Rules and of the ordinary practice of the Court is required. The degree of relaxation should not be greater than the exigency of the case demands. It must be commensurate therewith. Mere lip service to the requirements of Rule 6(12) (b) will not do and an applicant must make out a case in the founding affidavit to justify the particular extent of the departure from the norm, which is involved in the time and day for which the matter be set down.”[3]

[14] I have serious concerns about the urgency of this application:

[15] The Applicants allege interference with their business since April 2023, yet only brought this application in July 2024, over a year later.

[16] The termination letter provides a month's notice until 1 August 2024, which is a reasonable period.

[17] The extremely truncated timelines imposed on the Respondents (less than 24 hours to file an answering affidavit) are not adequately justified.

[18] The Applicants have not demonstrated imminent irreparable harm that cannot be addressed through normal court procedures.

[19] Many of the Applicants' allegations about client losses and business interference lack concrete evidence.

[20] It appears that any urgency in this matter is largely self-created due to the Applicants' delay in bringing the application. The principle that a party cannot rely on self-created urgency is well-established in our law.

[21] Furthermore, the Applicants have not adequately explained why they cannot obtain substantial redress through normal court procedures. Their main complaint relates to potential financial losses, which our courts have held is generally not sufficient grounds for urgency.

[22] In *I L & B Marcow Caterers (Pty) Ltd v Gretermans SA Ltd & another; Aroma Inn (Pty) Ltd v Hypermarket (Pty) Ltd & another*, [4] Fagan J stated:

“It is clear from the requirements set out in Rules 27 and 6(12) that the Court's power to abridge the times prescribed and to accelerate the hearing of the matters should be exercised with judicial discretion and upon sufficient and satisfactory grounds being shown by the applicants. The major considerations normally and in these two applications are three in number, viz the prejudice that applicants might suffer by having to wait for a hearing in the ordinary course; the prejudice that other litigants might suffer if the applications were given preference; and the prejudice that respondents might suffer by the abridgment of the prescribed times and an early hearing.”

- [23] Later in the judgment, the learned judge, with reference to prejudice to other litigants in general, held that the issue boiled down to whether the harm alleged by an applicant in an urgent application was the kind of harm that justified “the disruption of the roll and the resultant prejudice to other members of the litigating public” whose matters would take longer to be heard.[5]
- [24] For these reasons, I find that the Applicants have failed to establish that this matter is truly urgent. However, given the full arguments presented by both parties, I will proceed to consider the merits of the application.

ENFORCEABILITY OF THE SALE AGREEMENT AGAINST THE FIRST RESPONDENT

- [25] The Applicants seek to enforce the terms of the 1 July 2022 sale agreement against the First Respondent, particularly the provision for exclusive monitoring services.
- [26] It is trite law that only parties to a contract are bound by its terms. The evidence before me clearly shows that the First Respondent was not a signatory to the sale agreement. The agreement was between the First Applicant and the Second Applicant (represented by the Third Respondent).
- [27] The Applicants argue that because the Third Respondent was a director of both the Second Applicant and the First Respondent at the time, the First Respondent is bound. This argument is flawed. There is no evidence that the Third Respondent was authorized to bind the First Respondent to the agreement. A company is a separate legal entity from its directors and members.
- [28] The Applicants' reliance on the case of *Oakland Nominees (Pty) Ltd v Gelria Mining & Investment Co Ltd*[6] is misplaced. That case dealt with the ownership of shares after a share certificate was stolen, which is not analogous to the present situation.
- [29] Even if there was a separate agreement between the Applicants and the First Respondent regarding monitoring services, this would be distinct from the sale agreement. The First Respondent would be entitled to terminate such an agreement on reasonable notice, which they have done.
- [30] For these reasons, I find that the First Respondent is not bound by the terms of the 1 July 2022 sale agreement. The Applicants' prayer for specific performance against the First Respondent cannot succeed.

OWNERSHIP OF GPRS RADIOS

- [31] The Applicants seek the return of 50 GPRS monitoring radios, which they claim were sold to them as part of the business purchase.
- [32] The evidence before me shows that:
- 32.1. the GPRS radios are registered in the name of the First Respondent;
 - 32.2. the First Respondent pays all fees and expenses related to the radios;
 - 32.3. the radios are connected to the First Respondent's base station.
- [33] While the sale agreement does mention the transfer of 50 GPRS radios upon full payment, this term was between the Applicants. The First Respondent was not a party to this agreement.
- [34] Furthermore, the Applicants have not identified which specific radios they claim ownership of, nor have they provided concrete evidence that the Respondents have taken any radios belonging to them.
- [35] On the evidence before me, I cannot conclude that the Applicants have proven ownership of the GPRS radios in question. Their claim for the return of these radios must therefore fail.

INTERDICT

- [36] The Applicants seek an interdict prohibiting the Respondents from contacting their clients directly or indirectly.
- [37] The requirements for a final interdict are well-established:
- 37.1. a clear right;
 - 37.2. an injury actually committed or reasonably apprehended;
 - 37.3. the absence of any other satisfactory remedy.
- [38] The Applicants have failed to establish these requirements:
- [39] They have not demonstrated a clear right to prevent the Respondents from communicating with clients. The First Respondent is not bound by the non-solicitation terms of the sale agreement.
- [40] The evidence of actual injury is largely based on hearsay and unsubstantiated allegations. Many of the clients the Applicants claim to have lost appear to have terminated services long before the alleged interference.
- [41] The Applicants have other remedies available, including a claim for damages (which they state they intend to pursue).
- [42] For these reasons, the Applicants have not established grounds for the interdict sought.

ADMISSIBILITY AND WEIGHT OF EVIDENCE

- [43] I must address serious concerns about certain evidence presented by the Applicants, particularly in their replying affidavit.
- [44] The Applicants attached three unsigned letters which they rely on to substantiate their allegations. There are significant issues with these letters:
- [45] A letter purportedly from the First Respondent dated 5 July 2024 is denied by the alleged author, Ms. Leoni Botha. The Applicants have not explained why this letter was not included in their founding papers if it existed prior to the application.
- [46] A letter supposedly from AAA Security terminating services is contradicted by evidence from the purported author, Mr. S. Naidoo, who provides a different termination letter with an earlier date.
- [47] A letter from "The Brave Security" is unsigned and its provenance unexplained.
- [48] These discrepancies raise serious doubts about the authenticity of these documents. The Applicants have not adequately addressed the origin of these letters or how they came into their possession.
- [49] Considering these issues, and applying the principles in section 15(3) of the Electronic Communications and Transactions Act,[7] I find that little to no weight can be attached to these disputed letters.
- [50] This finding significantly undermines the Applicants' allegations of interference with their business and client relationships.

COSTS

- [51] The general rule is that costs follow the result. However, the court has a discretion to make a different order where the circumstances warrant it.
- [52] In this case, the Respondents have sought a punitive costs order on an attorney and client scale. They argue that the Applicants' conduct has been vexatious and that they have attempted to mislead the court with fraudulent documents.
- [53] While I have found against the Applicants on the merits, and have serious concerns about some of the evidence presented, I am not persuaded that their conduct rises to the level warranting a punitive costs order. The issues in this case were complex, and while the urgency was not established, I do not find that the application was brought in bad faith.

CONCLUSION

- [54] For the reasons set out above:
1. The application is dismissed.

2. The Applicants are ordered to pay the costs of the First and Second Respondents on a party and party scale.

ACTING JUDGE: HIGH COURT

POLOKWANE: LIMPOPO DIVISION

APPEARANCES FOR THE APPELLANT: Ms MG MAHASHA INSTRUCTED BY: MG MAHASHA AND ASSOCIATES INC. FOR 1st & 2nd RESPONDENTS: ADV SS GREEN INSTRUCTED BY: CHARLES PIETERSE ATTORNEYS DATE OF HEARING: 18 JULY 2024 DATE OF JUDGEMENT: 6 AUGUST 2024

- [1] Norman Manoim 'Principles Regarding Urgent Applications' in Nicholas Haysom and Laura Mangan (eds) Emergency Law at 79.
- [2] 1977
- (4) SA 135 (W)
- [3] Luna Meubel supra 136C-137G
- [4] I L & B Marcow Caterers (Pty) Ltd v Greatermans SA Ltd & another; Aroma Inn (Pty) Ltd v Hypermarket (Pty) Ltd & another 1981
- (4) SA 108 (C) at 112H-113A.
- [5] I L & B Marcow Caterers supra at 114A-B
- [6] 1976
- (1) SA 441 (A)
- [7] Act 25 of 2002

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Prepared on 9 October 2026 · Esheria