

SOUTH AFRICA / JUDGMENT

Sports Tarven v Lin and Others (11248/2024) [2024] ZALMPPHC 205 (13 December 2024)

[2024] ZALMPPHC 205

COURT

Limpopo High Court, Polokwane

BEFORE

Mashamba

CASE / FILE NUMBER

11248/2024

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REPUBLIC

OF SOUTH AFRICA

IN

THE HIGH COURT OF SOUTH AFRICA

LIMPOPO

DIVISION, POLOKWANE

CASE

NO: 11248/2024

(1)

REPORTABLE: YES/NO

(2)

OF INTEREST TO THE JUDGES: YES/NO

(3)

REVISED: YES/NO

DATE:

13/12/2024

SIGNATURE:

In

the matter between:

THE
SPORTS TARVEN
APPLICANT
And
TIANJIM
LIN
FIRST RESPONDENT
SHENGZHE
ZHUANG
SECOND RESPONDENT
CHEUNG
KONG HOLDINGS
THIRD RESPONDENT
THE
CITY OF POLOKWANE
FOURTH RESPONDENT
MUNICIPALITY
MOOLMAN
GROUP
FIFTH RESPONDENT
THE
STATION COMMANDER
SIXTH RESPONDENT
AT
POLOKWANE POLICE STATION

JUDGEMENT

- APPLICATION FOR CONTEMPT OF COURT

MASHAMBA AJ

INTRODUCTION

- [1] On the 15th October 2024, the Applicants made an urgent rule nisi application before the above honourable court and the following orders were granted by the learned Acting Judge Pillay;
1. The rules regarding service and the time frames is dispensed with and this application is heard on an urgent basis, in accordance with the provisions of the Rules 6(12) of the Uniform Rules of the Court.
 2. The rule nisi returnable on the 30 January 2025 is issued on which date the Respondent will be called upon to show cause why the following Order should not be made final order of the abovementioned honourable Court.
 3. The first respondent, refrain from continuing to act unconscionably by harassing the Applicant;

3.1 The first Respondent, refrain from detaching doors from the business premises and further that the premises should be restored to the Applicant in its former state within 24 hours of service of this order.

3.2 The first Respondent is compelled to provide the Applicant with the Municipal invoices in order to make a determination of the pro rata payment due by the Applicant or alternatively the Municipality give the Applicant access to the Municipality invoices within the 30 days of receipt of this Order.

3.3 The first Respondent is compelled forthwith to refrain from denying the Applicant from accessing water in the premises.

4. The cost of the application to be the cost in the cause.

[2] The Respondents became aware of the court order on the 18th October 2024. The court order was served to the 1st, 2nd and 3rd Respondents ("the Respondents") on the 23rd November 2024 by sheriff. On the 15th November 2024 the court order was served to the Polokwane Municipality by sheriff.

BACKGROUND

[3] The urgent application for contempt of court was issued against the Respondents and set down for hearing on the 22 October 2024. On the 18th October 2024, the Respondents became aware of the Rule nisi application and court order which was not served to them but to a wrong address. The Respondents received the rule nisi application and court order from a friend but such was not properly served to them. On the 21st October 2024, subsequent to the knowledge about the court order, the Respondents through his attorneys, wrote a letter to the Applicant's attorneys, informing them that the rule nisi application, court order and the application for contempt of court was served at a wrong address, the Respondents pleaded that the matter should be removed from the urgent roll. The Respondents undertook to comply with the court order by installing the broken window and door glasses. The parties agreed that the matter should be removed from the urgent roll on the 22 October 2024.

[4] The applicant alleged that the Respondent continued not to comply with the court order. On the 31st October 2024 the application for contempt was re-enrolled on the urgent court and struck off the roll due to non-service. According to the Respondents, the doors and glass was replaced in its original position on the 04th December 2024. The applicant indicated that as a result of the continued non-compliance with the court order the Applicant further

re-enrolled the matter on the urgent roll on the 12 November 2024 and the matter was further removed from the roll due to none appearance. The Respondents indicated that the parties have agreed that the Applicant should remove the matter from the roll on the 12th November 2024 but the Applicant did not appear in court. The matter was enrolled again on the 03rd December 2024 and the matter was struck off the roll due to none-compliance with the rules and practice

directives of the court. Finally, the matter was re-enrolled again before this court to be heard on the 10th December 2024. This matter has been on the urgent court roll several times and one will be curious of its urgency but the court has a responsibility to see that issues are adjudicated to avoid it coming back on the urgent court roll.

DISCUSSION AND COURT FINDINGS

[5] The Applicant argued that this matter is urgent since the Respondents have failed to comply with the court order. Although the court was sceptical about the urgency in this matter, considering several times the matter was removed and struck off the roll due to non-appearance with the court uniform rules and practice directives. The court

further considered that for the interest of justice the merits of the application for contempt of court should be entertained.

[6] The Applicant indicated that they opted to serve the court order by hand to the address that to his knowledge was the address of the Respondent and could not use the service by Sheriff because of lack of funds. The Applicant acknowledged that the court order was served to the wrong address but it is not on dispute that they received it or became aware of the court order as early as the 18th October 2024. The Applicant further indicated that the Respondent partially complied with the court order by installing a broken window but failed to do branding since the window which was broken was branded. The applicant further indicated that the Respondents cut water and electricity.

[7] The Respondents indicated that from the date of the receipt of the court order they took a reasonable step to repair the doors and window glasses. The Applicant contention that the Respondent did not comply with the court order is unjustified because they installed the broken windows and door glasses but they could not install the branding as required by their liquor distributors. The Respondent indicated that it was impossible to comply with repairing windows and branding it to its required standard by the Applicant's distributors and such was not mentioned in the court order and even if it was mentioned but it would be impossible to do it within 24 hours in terms of the court order.

[8] The Respondents disputes that they cut water and electricity and indicated that the municipality bill is in arrears and the Municipality terminated their services which includes cutting of water and electricity.

[9] The Applicant further indicated that the Respondents withheld the municipal bills or statements which render it impossible to pay for municipality services. The court indicated that on this point the order required that the municipality should comply with the court order within 30 days from receipt of the court order by furnishing the municipal invoices or statements of account to the Applicant. The court order was served to the municipality on the 15th November 2014, the rule nisi court order was served to municipality by hand and according to paragraph 3.2 of the rule nisi court order, the municipality has 30 days to comply with the court order and 30 days will lapse on the 15th of December 2024, so the

Municipality is still under their rights to consider the court order. The Respondent indicated that the Applicant never requested the municipal invoices or statements from them and it is absurd for the Applicant to mentioned it at court. The court finds that the Applicant did not ask for municipal invoices or bill from the Respondents and the Applicant has an alternative remedy which is to request statements from the Municipality. The Applicant indicated that the municipality denied with the access to the municipal invoices as required by the court order but the court finds no proofs from these assertions but also that 30 days within which to do so was not lapsed.

[10] It has been held by our Courts, in a long line of decisions, that contempt of Court is the wilful and mala tide refusal to comply with an order issued by the Court. See *Clement v Clement* 1961 (3) SA 861 (T) at 866A; *Consolidated Fish (Pty) Ltd v Zive and Others* 1968 (2) SA 517 (C) at 523A; *Noel Lancaster Sands (Edms) Bpk v Theron* 1974 (3) SA 688 at 691A-D; *Frankel Max Pollak Vinderine v Menell Jack Hyman Rosenberg* [1996] ZASCA 21; 1996 (3) SA 355 (A) at 367H.

[11] In the case of *Consolidated Fish (Pty) Ltd v Zive*[1], its was stated that A deliberate disregard is not enough, since the non-complier may genuinely, albeit mistakenly, believe him- or herself entitled to act in the way claimed to constitute the contempt. In such a case good faith avoids the infraction. In the

case of *Noel Lancaster Sands (Edms) Bpk v Theron*[2] per Botha J, stated that even a refusal to comply that is objectively unreasonable may be bona fide (though unreasonableness could evidence lack of good faith).

[12] The court has deliberated with the Applicant's counsel who was eloquent in his submissions in support of the Application for contempt against the Respondents but could not furnish the court with proofs of his allegations. The Applicant contends that the Respondents cut water and electricity but such was not found to be factual and the Respondents disputed such issue and submitted that the cut of water and electricity was done by the Municipality as a result of arrears due and unpaid.

[13] The Respondent submitted that they have complied with the court order and that was the reason the parties agreed that the matter should be removed from the roll on the 12th November 2024 and the Respondent complied but the dispute arouse where the Applicant demanded the Respondents to reconnect water and electricity which they have no power to do so since the account is in arrears. The Respondents also indicated that the issues that the Applicant contends that it should be complied with are not precisely stated in the court order, therefore, the Applicant interpreted the court order in diverse which is in contrast with how the Respondents comprehend. This court finds that the court order did not specifically orders the Respondents to re-connect electricity and water and the court order did not order the Respondents to install the branding on the window as required by distributors and demanding such to be done is unreasonable. This court finds that the issues raised by the Applicant are not precisely mentioned in the court order and the Respondents

should not be found to be in contempt.

[14] The court finds that the Applicant failed to prove beyond reasonable doubt that the Respondents is in wilful and mala tide refusal to comply with an order issued by the court. The court does not see deliberate failure by the Respondent to comply with the court order. The Applicant raised many issues against the Respondents but failed to provide proofs in order to prove his case.

COST

[15] The general rule is that the cost follows the successful party and this court will not deviate from the general rule. The court noted that the Respondents has to use their scarce resources in order to oppose this urgent application and it will be fair to award cost in their favour.

ORDER

[16] In the result, I make the following orders;

1. The application for contempt of court order is dismissed with cost in party and party scale, counsel fee to be at scale B.

JUDGE OF THE HIGH COURT,

POLOKWANE; LIMPOPO DIVISION

APPEARANCES

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DATE OF HEARING: 10th December 2024

DATE OF JUDGEMENT: 13th December 2024

[1] 1968 (2) SA 517 (C) 524D

[2] 1974 (3) SA 688 (T) 692E-G

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