

SOUTH AFRICA / JUDGMENT

Starbuck N.O and Another v Timana and Others (49784/2020) [2021] ZAGPPHC 389 (11 June 2021) [2021] ZAGPPHC 389

COURT

North Gauteng High Court, Pretoria

BEFORE

NE Nkosi

CASE / FILE NUMBER

49784/2020

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IN

THE HIGH COURT OF SOUTH AFRICA

(GAUTENG

DIVISION, PRETORIA)

Case

no: 49784/2020

REPORTABLE:NO

OF

INTEREST TO OTHER JUDGES

REVISED:NO

DATE:11

June 2021

In

matter between:

CONRAD

ALEXANDER STRABUCK

N.O.

First Applicant

AMANDA

KANYISA BIKANI N.O.

Second Applicant

(Cited

herein in their capacities as duly appointed

Liquidators

of Timana Properties (Pty) Ltd)

And

MANDLA

PETER
TIMANA
First Respondent
THE
SOUTH AFRICAN POLICE SERVICES
Second Respondent
THE
MINISTER OF SAFETY AND SECURITY
Third Respondent

JUDGEMENT

NE NKOSI AJ

- [1] The applicants are the duly appointed liquidators of Timana Properties (Pty) Ltd (“Timana Properties”). They brought an urgent application for an interim interdict which was granted on 11 November 2020 in the following terms:

“1. In light of urgency, condonation is granted for the non-compliances with the normal Rules of Court with regard to service, form and time-period s as contemplated in Rule 6(12).

2. That an interim interdict returnable on 30 November 2020 at 10:00 be granted in terms of which the first respondent and any affected

person must show cause why the order should not be made final:

2.1 That the first respondent and/ or any individual associated with first respondent be interdicted and restrained from accessing or entering the property of Timana Properties (Pty) Ltd known as Farm Schagen 273 Ptn 5 (“the property”);

2.2 That the first respondent and its employees, and/ or any other representatives, be restrained from in any manner interfering with or conducting themselves in any manner that would prejudice access or possession of the property of Timana Properties (Pty) Ltd, and the applicants’ operations to include applicants employees, and/ or any other representatives on behalf of the applicants.

3. That prayer 2 be regarded as an interim interdict with immediate effect;

4 In the event that the first respondent or any associated person with first respondent fails to adhere to the interdict contemplated in paragraphs 2 and 3 above, that the applicants shall be authorised to appoint the relevant Sheriff of the above court, with the assistance of the South African Police Services if necessary, as their duly authorised agent, and instruct the Sheriff to take all necessary steps to give effect to this order;

5 Costs be granted against the first respondent”[1]

[2] The Rule nisi was extended several times and eventually the matter was heard on 31 May 2021 being the return date. On the return date, the first respondent appeared in court to oppose the granting of the final interdict.

[3] The requirements for an interim interdict are as follows:

“3.1 a *prima-facie* right on the part of the applicant;

3.2 a well-grounded apprehension of irreparable harm if the interim relief is not granted and the ultimate relief is granted;

3.3 a balance of convenience in favour of granting the interim relief; and

3.4 the absence of any satisfactory remedy available to the applicant”[2]

[4] In Joubert NO and Others[3] the court reiterated the grounds of an interim interdict as follows:

“The requisites for an interim interdict are well known. The applicants are obliged to show that the right which is the subject matter on the main application which they seek to protect by means of an interim relief is clear, or if not clear, is prima facie established, though open to some doubt. If the right is only prima facie established then it must be shown that there is a well grounded apprehension of irreparable harm to the applicants if the interim relief is not granted and they ultimately succeed in establishing their right; that the balance of convenience favours the granting of interim relief, and that the applicants have no other satisfactory remedy.”

In casu, Teffo J in granting an interim relief made a finding that the applicants succeeded in proving all the requirements of an interim interdict. In my view the court's finding was correct. I shall not burden this judgement by repeating her finding but shall defer to the judgment for the full reasons.

[5] The requirements for a final interdict are:

“6.1 a clear right on the part of the applicant;

6.2 an injury actually committed or reasonable apprehension; and

6.3 there is no other satisfactory remedy available to the applicant:”[4]

[6] In the case of a final interdict, the applicant bears the onus of showing on a balance of probabilities the existence of requirements for a final interdicts.[5]

[7] The applicants are the appointed liquidators of Timana Properties (Pty) Ltd. They are therefore obligated by legislation to take control of the affairs of Timana Properties in order, inter alia, to protect the interests of creditors. This fact was not disputed by Mr. Mapila who appeared for the first respondent at the hearing of this application. In my view, the applicants have a clear right to seek a final order.

- [8] It has already been established that the first respondent interfered with the applicants in the execution of their duties as liquidators. It is therefore reasonable to apprehend such interference more so that the first respondent still maintains that he never prevented the applicants to carry out their duties.
- [9] In my view, and in the circumstances of this case, a final order is an appropriate remedy. Otherwise, any other remedy would frustrate the statutory functions of the liquidators to the detriment of the creditors.
- [10] The defences raised by the first respondent before Teffo J were that, the debt owed to Nedbank which formed the subject of the insolvency proceedings had been paid in full and that there was a pending appeal challenging the final liquidation order. There was no proof placed before court to substantiate these allegations.
- [11] In casu, it was submitted by Mr. Van Rensburg, for the applicants, that the final order should be granted because nothing had changed since the granting of the interim order. I am inclined to agree with Mr. Van Rensburg because, still no proof of payment of the debt and the appeal were placed before the court. Instead, Mr. Mapila conceded that the debt had not been paid in full. It further emerged as a common cause factor, although made from the bar, that the appeal was heard and dismissed.
- [12] The contentions made by the first respondent in an attempt to show cause why a final order should not be granted were a repeat of what was said to Teffo J. These contentions were dealt with in the judgment and rejected.
- [13] I therefore do not find any compelling reason why I should not grant the order sought by the applicants. In the circumstances I make the following order:
1. The final interdict is granted;
 2. The first respondent is to pay costs inclusive of costs of Counsel.

NE NKOSI, AJ

Acting judge of the

High Court

Date of hearing:

31 May 2021

Date of Judgement: 11 June 2021

For the Applicant: Advocate SJ Van Rensburg SC

Instructed by:

NJ De Beer Attorneys

Pretoria

For the Respondent: Advocate M Mapila

Instructed by:

K Sigama Attorneys

Centurion

[1] Caselines 009 - 19 to 21

[2] 2 Joubert No and Others v Maranda Mining Company (Pty) Ltd and Others [2010] 2 ALL SA 67 (GNP) para 26 also setogelor v Setlogelo 1914 AD 221 at 227

[3] Footnote 2, Supra, at para 26

[4] Ladychin Investments (Pty) Ltd v South African National Roads Agency LTD and Others 2001 (3) SA 344 (N).

[5] NUMSA and Others v Corn ark Holdings (Pt y) Ltd (1997) 18 ILJ 516 (LC)

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Prepared on 10 October 2026 · Esheria