

SOUTH AFRICA / JUDGMENT

T.S.S and Another v First National Bank of SA Limited ta FNB and Another (2025/025807) [2025] ZAGPJHC 713 (8 March 2025)

[2025] ZAGPJHC 713

COURT

South Gauteng High Court, Johannesburg

BEFORE

WJ du Plessis

CASE / FILE NUMBER

2025/025807

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Policy

THE

HIGH COURT OF SOUTH AFRICA

GAUTENG

DIVISION, JOHANNESBURG

Case

2025-025807

(1)

REPORTABLE: No

(2)

OF INTEREST TO OTHER JUDGES: No

(3)

REVISED: Yes

8

March 2025

In

the matter between:

T[...]
S[...]
S[...]
First Applicant
N
AND C MAINTENANCE AND
Second Applicant
SPARES
(PTY) LTD
and
FIRST
NATIONAL BANK OF SA
First Respondent
LIMITED
t/a FNB
S[...]
S[...]
Second Respondent

JUDGMENT

DU PLESSIS J

Introduction

- [1] The first applicant ("Ms S[...]") and second respondent ("Mr S[...]") are in the process of divorce. They are also co-directors of the second applicant, [...] and [...] M[...] and S[...] (Pty) Limited ("the company") and co-signatories of the company's bank accounts with the first respondent, First National Bank ("FNB"), which Ms S[...] seeks to unfreeze. Ms S[...] (and the company) seek an order declaring FNB's conduct in freezing the bank accounts unlawful and directing their immediate unfreezing.
- [2] Ms S[...] also seeks interdictory relief against Mr S [...], prohibiting him from making false accusations and statements to FNB about the first applicant's dealings with the second applicant (a so-called gagging order).

Urgency

- [3] Ms S[...] and the company assert that this matter is urgent. The company must comply with its contractual obligations towards service providers, employees, and customers. The frozen accounts, they submit, will lead to financial and reputational ruin, which cannot be undone later. Ms S[...] also cites household financial obligations that require immediate attention.
- [4] FNB does not oppose the urgency of the matter and abides by this Court's decision.

- [5] Mr S[...], however, submits that any urgency is self-created, asserting that the Ms S[...] was aware of the account freeze from 4 February 2025 but only approached the Court on 22 February 2025.
- [6] Mr S[...] further contends that alternative funding sources were available to the applicants, making the need for urgent relief less compelling. Part of the reason he sought to freeze the FNB account was the fact that large sums of money were transferred to an Investec Bank account (which is not frozen), without Ms S[...] providing substantive documentation for these transactions. He thus claims that Ms S[...] can use that money to make payments and that there is no imminent crisis.
- [7] After launching this urgent application, Mr S[...]’s attorneys sent a letter to the applicant’s attorneys with a "with prejudice" proposal, proposing a solution to the problem of having to make payments from a frozen account. That includes appointing Mr S[...] as a co-signatory to the bank accounts, as was agreed upon in a Shareholders’ Agreement in January 2025. Additionally, both directors must authorise transactions to ensure proper corporate governance and prevent unilateral withdrawal of funds – the reason for the freezing of the accounts. Once this is in place, the parties can approach the bank to uplift the freeze.
- [8] The applicants made an application to have this letter struck out, submitting that it is privileged^[1] from disclosure even if the letter itself said "with prejudice" and Mr S[...] indicated that it will be attached to the answering affidavit.
- [9] Ms S[...]’s attempt to strike the respondent’s "with prejudice" offer from the record is misplaced. A "with prejudice" offer is not subject to the same restrictions as a "without prejudice" communication, which is privileged and requires the consent of both parties for disclosure. By making the offer "with prejudice," Mr S[...] intentionally placed it on record as an open and admissible offer upon which he is entitled to rely. He is not disclosing an offer from Ms S[...]; it is his own offer. As was confirmed in *Agnew v Union and South West Africa Insurance Co Ltd*,^[2] a "with prejudice" offer is, by its very nature, an open offer that the offeror allows to be referred to in proceedings. The letter will thus not be struck.
- [10] This offer also provides an alternative remedy, which undermines the urgency of the application. The applicant has a viable solution outside of an urgent court order: implementing the agreed-upon governance mechanisms and then approaching the bank to unfreeze the account. Urgency cannot be based solely on self-imposed limitations, especially when the respondent has made a good faith offer in line with a previous agreement that removes the need for immediate court intervention. The matter thus stands to be struck from the roll for lack of urgency.
- [11] I am compelled to address the applicant’s contention that Mr S[...] resigned from the company, because he sent an email to that effect in January, as this links to the issue of authorisation to deal with the company’s finances. His purported resignation was not genuine and unequivocal, as his subsequent actions indicate otherwise. Instead of severing all ties with the organisation, he continued to engage in its affairs, maintain an active role in

decision-making, and interact with key stakeholders as though still in office, with the knowledge of Ms S[...]. His name is still on the company's stationary and used in communications. This conduct is inconsistent with a bona fide resignation. Without a clear severance from the role and responsibilities, Mr S[...]’s claim to have resigned is contrived and lacks legal effect.

[12] Lastly, the request for an interdict against Mr S[...] to prevent further alleged defamatory statements is not legally sustainable. While the right to dignity and reputation is constitutionally protected, defamation is ordinarily remedied through damages, not an interdict.[3] Courts only grant prior restraint orders in exceptional cases where the statements are clearly false, malicious, and likely to cause irreparable harm.[4] The applicant has not demonstrated such exceptional circumstances. Absent clear, demonstrable falsehoods causing irreparable harm, a pre-emptive restriction on speech is unjustified.

[13] Consequently, the interdict application thus stands to be struck from the roll with costs for lack of urgency.

Order

[14] The following order is made:

1. The application to strike out is dismissed.
2. The matter is struck from the roll for lack of urgency, with costs to be taxed on scale B.

WJ du Plessis

Judge of the High Court

Gauteng Division, Johannesburg

Date of hearing: 4 March 2025 Date of judgment: 8 March 2025 For the applicants: K Kabinde instructed by Ndlovu Lindiwe Attorneys Inc For the first respondent: Peterson instructed by Glvoer Kannieappan Inc For the second respondent: D Goosen instructed by Scalco Attorneys

[1] Absa Bank Limited v Hammerle Group (Pty) Ltd

[2015] ZASCA 43 par 13.

[2] 1977 (1) SA 617 (A), see also Van Der Westhuizen v Akarana Homeowners' Association

[2023] ZAWCHC 220.

[3] See Herbststein J, et al The Civil Practice of the High Courts and the Supreme Court of Appeal of South Africa. 5th ed. Juta; 2009 chapter 44 page 1475.

[4] National Media Ltd v Bogoshi 1998 (4) SA 1196 (SCA); Midi Television (Pty) Ltd v Director of Public Prosecutions (Western Cape)

[2007] ZASCA 56; 2007 (5) SA 540 (SCA).

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