

SOUTH AFRICA / JUDGMENT

Virtual Benefit Solutions Tech (Pty) Ltd v Koekemoer and Others (2023/082132) [2023] ZAGPJHC 1065 (22 September 2023) [2023] ZAGPJHC 1065

COURT

South Gauteng High Court, Johannesburg

BEFORE

S D J Wilson

CASE / FILE NUMBER

2023/082132

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IN THE HIGH COURT OF
SOUTH AFRICA
(GAUTENG DIVISION,
JOHANNESBURG)

Case

No. 2023/082132

NOT REPORTABLE

NOT OF INTEREST TO OTHER

JUDGES

REVISED

22.09.23

In the matter between:

VIRTUAL
BENEFIT SOLUTIONS TECH (PTY) LTD
Applicant
And
DR
HENDRIK LAMBERT KOEKEMOER
First
Respondent
AMLIKE
HOLDINGS (PTY) LTD
Second
Respondent
AMLIKE
SOUTH AFRICA (PTY) LTD
Third
Respondent

JUDGMENT**WILSON J:**

1 On 18 August 2023 the first respondent, Dr. Koekemoer, and the second respondent, Amlike, approached my sister Yacoob J ex parte for an order attaching several items of moveable and incorporeal property then in the possession of the applicant, “VBS”.

Yacoob J granted that order, but, once the order was served and the property was attached, VBS set the matter down for reconsideration

before my brother Moorcroft AJ. On reconsideration, Moorcroft AJ discharged Yacoob J’s order and dismissed the ex parte application with costs. He did so on the basis that neither Dr. Koekemoer nor Amlike had the necessary standing to sue for the relief they obtained from Yacoob J.

2 Most reasonable people would assume that this meant that the property should go back to VBS. But that did not happen. Shortly after Moorcroft AJ’s order was handed down, Dr. Koekemoer’s and Amlike’s attorney wrote to the Sheriff and demanded that the Sheriff give the property to his clients. The Sheriff acquiesced.

3 This meant that, although neither Dr. Koekemoer nor Amlike were ever entitled to the order attaching the property, the end result was that they obtained possession of it anyway.

4 This outcome is plainly perverse. But I do not think I can do anything about it. VBS asks me to declare that Dr. Koekemoer’s

and Amlike’s attorney’s conduct was contemptuous of Moorcroft AJ’s order, and to direct the respondents to purge

this contempt by returning the property. But I do not see how that relief follows. Moorcroft AJ declined to order the return of the property to VBS, despite being asked to do so. Moorcroft AJ does not explain in his judgment why he declined to make such an order, but it is possible that he felt that, the matter having been determined on the issue of standing, there was no warrant to enter into the issue of who had the right to possess the property the Sheriff attached.

5 Be that as it may, Moorcroft AJ having declined to say where the property should go, there was nothing inherently contemptuous –

as opposed to just plain sneaky – in what Dr. Koekemoer’s and Amlike’s attorney did. Ms. Delport, who appeared for VBS, accepted that there was no breach of Moorcroft AJ’s order. Wisely, she declined to make out a case of constructive contempt, given that constructive contempt is only committed where a party acts maliciously to frustrate the ability of a court to decide an issue that it has not yet been able to determine.

6 The situation in this case is different. Although most reasonable people would consider that Moorcroft AJ's judgment cleared the way for VBS to go and get the property back from the Sheriff, his order does not expressly, or by necessary implication, forbid any of the respondents from doing what they did.

7 It was not suggested that I should develop the law of contempt to apply to situations in which a party acts inconsistently with a

court order's unstated, but reasonably apprehended, consequences, and I would have been disinclined to do so.

8 Ms. Delport did not identify any other basis on which VBS could demand the return of the property, and none was pleaded. The property is the hotly-contested object of a contractual dispute about the sale of a business, and the issue of who has the right to possess

the property is unlikely to be clear cut.

9 For all these reasons, the application must fail. Mr. van Nieuwenhuizen asked for a dismissal with costs, but I do not see why Dr. Koekemoer's and Amlike's attorney's sharp conduct should be rewarded to that extent.

10 The application is dismissed, with each party paying their own costs.

S D J WILSON

Judge of the High Court

This judgment is handed down electronically by circulation to the parties or their legal representatives by email, by uploading to Caselines, and by publication of the judgment to the South African Legal Information Institute. The date for hand-down is deemed to be 22 September 2023.

HEARD ON: 19 September 2023

DECIDED ON: 22 September 2023

For the Applicant:

B Delport

Instructed by

Lanham-Love Galbraith-Van Reenen Inc

For the Respondents:

HP van Nieuwenhuizen

Coetzee Attorneys

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