

SOUTH AFRICA / JUDGMENT

## WBHO Construction (Pty) Ltd v Buwa and Others (5521/2015) [2015] ZAECHGC 115 (28 October 2015) [2015] ZAECHGC 115

COURT

Eastern Cape High Court, Grahamstown

BEFORE

N G Beshe

CASE / FILE NUMBER

5521/2015

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### Source record

IN THE HIGH  
COURT OF SOUTH AFRICA  
(EASTERN  
CAPE DIVISION, GRAHAMSTOWN)  
CASE  
NO.: 5521/2015  
In

the matter between:

WBHO  
CONSTRUCTION (PTY) LTD  
Applicant  
And  
MATIKITI  
BUWA  
1st  
Respondent  
FUYA  
MANYEKA  
2nd  
Respondent  
SETHU  
PLAATJIE  
3rd  
Respondent  
THEMBA  
MJUKU  
4th  
Respondent

PHUMLILE  
NTANJANA  
5th  
Respondent  
ZAMIKHAYA  
MYOZOLO  
6th  
Respondent  
THE  
COMMANDING OFFICER, SOUTH  
AFRICAN  
POLICE SERVICES, PEDDIE  
7th  
Respondent

## JUDGMENT

BESHE, J:

- [1] It is trite that under normal circumstances respondent in an application has five (5) days within which to enter an appearance and fifteen (15) days to file an answering affidavit. However Rule 6 (12) of the Uniform Rules of this court allows the court to dispense with the forms of service and time periods provided for in Rules 4 and 6 (5). This in cases where the applicant has made out a case for urgency.
- [2] Applicant in this matter approaches this court on urgent basis seeking a rule nisi to be returnable on Tuesday the 24 November 2015 in the following terms:

2.1 Interdicting and restraining the First, Second, Third, Fourth, Fifth and Sixth Respondents and/or any other persons acting for or on behalf of the said Respondents, or making common cause with the said Respondents, from:

2.1.1 interfering in any way whatsoever with the construction activities and/or administration and/or business of the Applicant at the Applicant's site offices at Pikoli Village, district of Peddie, and/or at any other place within the area of Peddie and Grahamstown where the Applicant's employees render services on the upgrading of the National Route N2 between Grahamstown and the Fish River Pass, including the bypass road to be constructed in the vicinity of the Pikoli Village to divert traffic from the existing N2 (thereinafter referred to as "the project");

2.1.2 intimidating and/or threatening and/or harassing and/or causing violence and/or threatening to cause violence to any worker and/or employee and/or official and/or supplier sub-contractor and/or employee of any supplier and/or sub-contractor of the Applicant;

2.1.3 causing any damage and/or threatening to cause any damage to any property of the Applicant, any property or possession of any worker and/or employee and/or official and/or supplier and/or sub-contractor and/or employee of any supplier and/or sub-contractor

of the Applicant;

2.1.4 inciting and/or encouraging violence against any other persons at or near the site offices of and any site occupied by the Applicant on the project;

2.1.5 entering the site offices or being within a distance of 500 metres from any site office of the Applicant on the project;

2.1.6 protesting and/or demonstrating within 500 metres from the site offices or any of the sites occupied by the Applicant on the project;

2.1.7 being unlawfully on any of the sites occupied by the Applicant on the project.

2.2 Directing that in the event of a failure by the Respondents to comply with the above Interdict, that the Sheriff of this court assisted in so far as may be necessary by the South African Police Services, shall be authorised and directed to ensure compliance with the Interdict;

2.3 Directing that the Sheriff may remove any obstructions, implements or barricades which may or have been erected by any of the Respondents.

3. That the First to Sixth Respondents, jointly and severally the one paying the other to be absolved, be ordered to pay the costs of this application.

4. Pending the return date, the provisions of paragraph 2 shall act as an interim Interdict.

5. That the Seventh Respondent is requested to take all steps necessary to ensure that the First to Sixth Respondents comply with the above Orders.

6. That the Respondents may anticipate the return day on 27 hours notice.

[3] The issuing of the rule nisi is opposed by the first to sixth respondents on the basis inter alia that:

- The matter is not urgent.
- Applicant lacks the locus standi in judicio to institute these proceedings.
- The applicant has failed to explicitly set forth the circumstances which he avers renders the matter urgent and reasons why it claims it could not be afforded substantial redress at a hearing in due course.
- The allegations made in the founding affidavit are denied.

[4] Is the matter urgent? According to the applicant, although the conduct sought to be interdicted commenced on the 25 August 2015

there had been attempts in the form of meetings to resolve the issue. It was as a result of first to sixth respondents who were accompanied by others “descending on the work site and persisted with their aggressive and violent conduct, threatening the workforce” on the 13 October 2015 that it was decided to launch these proceedings. On the 19 October 2015 Zukiso Boyce Don Campbell and Ncedo Mlothana deposed to affidavits to members of the South African Police Service (SAPS)

about what the respondents and their group did at the site in question. On the 21 October 2015 the directors of the applicant authorised the deponent to the founding affidavit. Gregory Dudley Forword, as the Contracts Manager of the company (WBHO) to sign any document necessary to give effect to the institution of urgent proceedings to prohibit and interdict the activities described in the draft notice of motion. Some of the respondents were served on the 22 October 2015. First respondent was only served on the 24 October 2015.

[5] From the above it is clear that applicant did not remain supine and do nothing for a week.

[6] Does applicant have the judicial standing to institute these proceedings? It is common cause that applicant was awarded a contract

to upgrade the N2 Grahamstown and Fish River Pass. As part of the project applicant trains approximately sixty (60) trainees to build the road. As part of the training they go on site under the membership of the applicant and practice skills they are thought

building the road.

[7] It is such training (classroom and practical) that the first to sixth respondents together with others are alleged to have disrupted. In my view this gives the applicant the right to seek an interdict to restrain first to sixth respondents and their associates from disrupting the work carried out at the said site if they believe that they are acting unlawfully. Applicant has every right to institute these proceedings.

[8] At paragraph 40.3 of founding affidavit, Forword contends that as is evident from his allegations about the conduct of the first to sixth respondents and company that the matter is urgent and that there is no alternative remedy available to it. First to sixth respondents deny that there was force or threats used as alleged by the applicant.

[9] Another bone of contention has been whether or not the respondents (first to sixth) have articulated their grievances against the applicant's activities in the area. In my view whether or not there were valid grievances is immaterial. Even if there were, that would not entitle the respondents to threaten the applicant's workforce with violence and disrupt applicant's activities.

[10] I am satisfied that the applicant has made out a case for issuing of the rule nisi.

[11] At the start of the proceedings counsel for the first to sixth respondents alluded to the need to supplement respondents'

papers in the event of the matter being postponed.

- [12] Having made a finding that the matter is urgent, that does not mean that the respondents have not been prejudiced by the truncation of the periods provided for in the rules. In my view this is a matter where because the return date will be set for the 24 November 2015, the respondents should be granted leave to supplement their papers should they wish to do so, which they must do ten (10) days after the issue of this order.
- [13] Accordingly the rule nisi in the terms sought by the applicant is hereby issued with the return date thereof being the 24 November 2015.

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N G BESHE

JUDGE OF THE HIGH COURT

APPEARANCES

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