FREE STATE HIGH COURT, BLOEMFONTEIN
REPUBLIC OF SOUTH AFRICA

Case no: 5377/09

In the matter between:

ISRAEL SABAT PAPANE	1st PLAINTIFF
PETRUS PAPIKI PAPANE	2nd PLAINTIFF

AND

DERICK VAN EEDEN	1st DEFENDANT
FRIENDLY SUPERMARKET (PTY) LTD	2nd DEFENDANT
MASILO KOENANE N.O	3rd DEFENDANT
COMMISSION FOR CONCILIATION MEDIATION & ARBITRATION	4th DEFENDANT

CORAM: C.J.MUSI,J

JUDGMENT BY: C.J. MUSI, J

DELIVERED ON: 19 JANUARY 2011

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[1] This matter was brought before me at the instance, or rather insistence, of the first plaintiff as a review of taxation. Although I am of the view that this is not a review of taxation, I decided to write this judgment in the interest of justice and finality.

[2] The facts of this matter read like a tragicomedy. The second plaintiff (Petrus Papane) is the first plaintiff's (Isreal Papane) brother. Petrus Papane was employed by the second defendant (Friendly Supermarket (PTY) Ltd). The plaintiffs allege that the first defendant (Derick van Eeden) owns Friendly Supermarket (PTY) Ltd, which is an artificial person. No reason is given as to why Derick van Eeden is cited in his personal capacity. Friendly Supermarket (PTY) Ltd allegedly acted unfairly (unfriendly?) by dismissing Petrus Papane and other employees for operational reasons. The matter was referred to conciliation to the fourth defendant (the CCMA) and the third defendant (arbitrator) acting under the auspices of the CCMA, after conciliation failed, ruled that the CCMA does not have jurisdiction to arbitrate the dispute and that the matter should be referred to the Labour Court for adjudication.

[3] Dissatisfied with that decision, Petrus Papane approached his brother – who is, at best, a legal dilettante, at worst, a legal charlatan – to assist him. His brother, whose legal aspirations by far exceed his legal competence and ability,

decided to take up cudgels for him and entered the fray as a plaintiff. Probably thinking that consanguinity is sufficient to establish Israel Papane's *locus standi* in this case, the siblings issued summons against the four defendants.

[5] In their particulars of claim the plaintiffs requested the following relief:

> "(the) 2nd plaintiff prays for the judgment from this Honourable Court against the defendants for dilectual damages suffered by the 2nd plaintiff as a breach of contract and the costs of the cause of action (sic).
>
> 1) An order for the payment of R71766.08 (Seventy One Thousand Seven Hundred and Sixty six and eight cents) with the interests of 15, 5% calculated from date of the commencement of the dispute in question till the date of the payment (sic).
> 2) Further or Alternative relief." (My underlining)

[6] The defendants took exception to the particulars of claim on the grounds that it is vague and embarrassing and that it lack averments which are necessary to sustain the action. They requested that the plaintiffs' claim be dismissed with costs.

[7] The plaintiffs opposed the application. After hearing argument my Brother Moloi J made the following order:

> "The exception is upheld with costs on attorney to client scale against both respondents"

[8] The defendants' attorney delivered a notice of taxation wherein the taxation was set down for 3 August 2010. On the said date Isreal Papane and the defendants' attorney attended the taxing master's office. The bill of costs was taxed and an allocatur of R32 863. 07 (thirty two thousand eight hundred and sixty three rand and seven cents) was made.

[10] Isreal Papane then filed what he called a notice in terms of Rule 48(1)(c). In the said notice he states the following grounds for the review:

> "i) That application for exception by the purported attorney of the Respondents/ Applicants was dismissed with costs by Honourable. Justice Moloi on 22nd April 2010 not upheld as alleged.
>
> ii) Taxation of interim order should be toto with Rule 49 (11) Uniform Rules (sic)."

[11] The taxing master in his stated case states the following:

> "The exception was actually upheld with costs on the 22nd of April 2010 by the Honourable Judge KJ Moloi (find attached the copy of the order for easy reference).
>
> Furthermore I don't understand contention the taxation of interim order must be in toto with Rule 49 (11) of Uniform Rules, as there seems to be no appeal noted and the decision to uphold exception in not interim order. Even if appeal was noted the bill could be taxed and the execution be stayed until appeal is finalised (sic)."

[12] The exception had one prayer*, viz,* that the plaintiffs' claim be dismissed with costs. When Moloi J upheld the exception he dismissed the plaintiffs' claim. Isreal Papane clearly misunderstood the order.

[13] The second ground is also without merit. There was a valid court order. The bill of costs was properly taxed. There is no application for leave to appeal against Moloi J's order. That order was a final order and not an interim order. The taxing master is correct in his assertion that, if an appeal has been noted, the bill of costs may be taxed and the execution thereof stayed until after the finalization of the appeal. It is

clear that this matter was brought before me because Isreal Papane does not understand Moloi J's order and the Rules.

[14] I am constrained to make the following important concluding remarks. Isreal Papane is his own redoubtable legal adversary who by his disregard for or ignorance of legal rules condemns, seemingly undeserving, cases to their reward; undoubtedly to the detriment of the "beneficiaries" of his assistance and unfortunately to the annoyance and financial harm of those who are dragged to court to defend the frivolous actions that he institutes.

[15] In the matter of **I S Papane and Another v M Jerome and four Others** unreported case of this division under case number 1677/2010, which was also an unfair dismissal dispute that was dismissed at the CCMA, Israel Papane - who was never in the employ of any of the defendants - and the dismissed employee approached this court and he also cited himself as the first plaintiff.

[16] In the aforementioned case my brother Rampai J *inter alia* made the following scathing remarks about Israel Papane -

who was the first applicant in the summary judgment application - and his conduct:

> "The first applicant is well known in this Division. There are numerous files where he is personally involved… This particular matter clearly shows that the first applicant parades himself in the eyes of the public as a member of the legal profession who can represent people in courts of law… He is, therefore, by law not qualified to do the things that he has done in this particular matter and I am certain that he does not do this free of charge. The first applicant, in my view, is a danger to society. His acts are damaging to the image of the legal profession… It is now time that this gentleman is stopped in his tracks. Unless this is done, there is a serious potential danger that unsuspecting members of the public will suffer immense losses as a result of the illegal activities of this gentleman… His numerous and hopeless matters unnecessarily clog our civil court roll. Naturally they are enrolled at the expense of deserving cases"

[17] Rampai J struck that matter off the roll and ordered Israel Papane to pay the fifth defendant's costs on the attorney client scale.

[18] It is clear that Israel Papane cites himself as the first plaintiff in an attempt to circumvent the law in order to act as the second plaintiff's legal representative. I agree with Rampai J

"that this man should be stopped in his tracks".

[19] Rampai J expressed the view that there is not much that the Law Society can do because Israel Papane is not its member. I beg to differ. The Law Society has a duty to protect the profession. If the problem is as pervasive as described by Rampai J and the person takes money from the public for his illegal services, as Rampai J seems to suggest, then the Law Society cannot be seen to stand idly by whilst such atrocities are committed in the name of the profession. The nobility of the profession is eroded by such criminal conduct. It is a crime to pretend or hold out to be an attorney. See section 83 of the Attorneys Act 53 of 1979 (the Act). Members of the public are afforded some protection by the attorneys fidelity fund if and when their money is stolen by a member of the profession or his/her employee. See section section 26 of the Act. They do not enjoy any protection if people of Israel Papane's ilk "act" on their behalf and disappear with their money. In my view the Law Society can investigate the matter and if the investigation brings to light that this man is holding out or pretending to be an attorney, lay criminal charges against him. It can, if it so elect, after

such investigation approach this court for interdictory or declaratory relief in order to protect the public and the profession. Attorneys are officers of this court. If one of their own or a non member acts in a systematic and calculated manner to undermine and erode the public's confidence in the courts or the judicial process, on the scale that Israel Papane seems to be doing, then the officers of the court have a duty to form a citadel to protect the integrity and dignity of the courts. Surely it has locus standi to bring such application to protect the public and the profession.

[20] In **LAW SOCIETY V SAND, KOWARSKY & CO 1910 TPD 1295** the locus standi of the Law Society was challenged by the respondents. Wessels J said the following, at 1296, "I take it that any person has the right to point out to the Court that its process is being abused, and then the Court will, upon being made acquainted with the circumstances, issue a rule, if it thinks fit. The Law Society, I think, is perfectly entitled to point out to the Court that its process is being abused, and to ask the Court to take some steps to rectify the matter." I agree. On the face of it Isreal Papane is abusing the court's process.

[21] In **Incorporated Law Society vs Donner & Co. (1905) 22**

SC 108, a case of holding out to be an attorney that was brought to court by the Law Society, the court found the respondent guilty of contempt of court by reasoning as follows:

"… without leave of the Court, no person has the right to act as a solicitor, and solicitors are generally recognised as officers of the Court. Where a person takes upon himself, without authority of the Court, to practice or act, as an attorney when he is none, I think the authority of the Court is to some extent infringed upon, and for that reason I am of opinion that the Court ought to interefere in this matter."

I express no opinion with regard to whether holding out to be an attorney, without more, necessarily constitutes contempt of court. I mention this case to illustrate that this is another avenue open to the Law Society. It also seems clear that the fact that section 83 imposes a pecuniary penalty for holding out to be an attorney does not deprive the court of its inherent power to punish such person for contempt of court. See **Incorporated Law Society v Wessels 1927 TPD 592** at 600**.**

[22] This matter was not opposed.

[23] I accordingly make the following order:

(a) The application for review is dismissed.

(b) No costs order is made.

(c) The registrar is requested to send a copy of this judgment and a copy of Rampai J's judgment to the chief executive officer of the Free State Law Society for its consideration.

C.J. MUSI, J

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