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**REPUBLIC OF SOUTH AFRICA
IN THE HIGH COURT OF SOUTH AFRICA
LIMPOPO DIVISION, POLOKWANE**

CASE NUMBER: 6111/2023

(1) REPORTABLE: YES/NO

(2) OF INTEREST TO THE JUDGES: YES/NO

(3) REVISED.

DATE 25 MARCH 2025

In the matter between:

BOULDER PROCESSING (PTY) LTD

1ST APPLICANT

DE GROOTEBOOM MINERALS (PTY) LTD

2ND APPLICANT

BOULDER CAPITAL (PTY) LTD

3RD APPLICANT

-and-

NGWAABE STEELBRIDGE BUSINESS FORUM

1ST RESPONDENT

JACK DIKOTOPE

2ND RESPONDENT

LLOYD KGOLE

3RD RESPONDENT

**THE MEMBERS AND SUPPORTERS OF THE FIRST
RESPONDENT AND SUPPORTERS OF THE SECOND
AND THIRD RESPONDENTS**

4TH RESPONDENT

TUBATSE DIESEL SUPPLY (PTY) LTD

5TH RESPONDENT

Delivered : 25 March 2025

This judgment was handed down electronically by circulation to

the parties' legal representatives by e-mail. The date and time for hand down of the judgment is deemed to be **25 March 2025** at **10:00 am**.

Date heard : **13 November 2024**

Coram : **Bresler AJ**

JUDGMENT

BRESLER AJ:

Introduction:

[1] The Applicant applies for final interdictory relief. The relief is opposed by the Fifth Respondent. The application was initially enrolled on the urgent court on the 6th of July 2023 and an interim interdict and ancillary relief was granted with the return date being the 9th of November 2023. On this day, the *rule nisi* was extended to the opposed roll of 13 November 2024.

[2] The First to Fifth Respondents collectively delivered a Notice of Intention to Oppose. Only the Fifth Respondent delivered an Opposing affidavit setting out its defence to the proceedings.

[3] This matter came before Court on the 13th of November 2024. Counsel for the Fifth Respondent applied for a postponement of the matter on the premise that the

Fifth Respondent is not in a position to continue with the matter as counsel for the Fifth Respondent, Adv. RR Maisela was unavailable due to receiving medical treatment. A medical certificate was presented in court.

- [4] This Court *inter alia* indicated that all the papers were duly filed, that the Applicants are ready to proceed, and the postponement was consequently refused. Reasons for the refusal of the postponement were duly delivered *ex tempore* in court.
- [5] This Court then directed that the matter will be dealt with on the papers only and without oral argument and that, for purposes of a just determination of the matter both parties will have an equal opportunity to provide the Court with Heads of Argument / Written Arguments. The Applicants were obliged to deliver such further Heads of Argument / Written Arguments on or before the 29th of November 2024, and the Fifth Respondent had an opportunity to deliver same on or before the 13th of December 2024. Judgment was accordingly reserved.
- [6] What follows is judgment on the merits of the matter. For purposes of determination of the merits, this Court had due regard to all papers and documents filed on record, the Applicants' Heads of Argument, the Fifth Respondent's Heads of Argument and the Applicant's further written submissions delivered in respect of the Fifth Respondent's Heads of Argument.

Factual synopsis:

- [7] The Applicants essentially claim the following relief:

7.1 The Applicants seeks to interdict and restrain the Respondents from continuing with their illegal and unlawful actions and to furthermore restrain from threatening, intimidating, threatening to assault and harm the Applicants, its employees, customers and the general public.

6.2 The Applicants also seek to interdict and restrain the Respondents from interfering in any way whatsoever with the business operations of the Applicants and to desist from venturing closer than 500 metres of the Applicants' business premises situated at Portion 9 (a portion of portion 1) of the Farm De Grooteboom 3[...] KT, Steelpoort, Limpopo Province and Erf 1[...] V[...] Street, Steelpoort, Industrial Park, Steelpoort, Limpopo Provinces (the 'Premises').

[8] The Applicants conducts the business of a chrome mine and a chrome wash plant at the Premises. The chrome is transported daily from the mine to the wash plant. Since approximately 2021, the Applicants have conducted business with the First Respondent. This was done largely under duress as the members of the First Respondent *inter alia* blocked access to the Applicants' Premises and committed other threatening or unlawful acts.

[9] The First Respondent's purpose is to create and / or negotiate business opportunities for its members. The members are predominantly local businesses.

The First Respondent forces businesses, like the Applicants, to conduct business with its members or face potentially violent and damaging consequences.

- [10] Since approximately 2021, the Applicants have purchased amongst others, diesel to the value of R22,408,597.23 from the Fifth Respondent, being one of the suppliers preferred by the First Respondent.
- [11] The Applicants started experiencing difficulties with the quality of the diesel delivered by the Fifth Respondent. On or about the 22nd of June 2023, the Fifth Respondent was informed that 'dirty diesel' (paraffin blended) and requested to provide constructive proposals on how to resolve the matter. On the 29th of June 2023 and whilst the Applicants were still awaiting constructive proposals from the Fifth Respondent, the First and Second Respondents, and a group of community members blocked entry to the Applicant's mining premises and demanded payment within an hour failing which all business operations of the Applicant will be barred from proceeding.
- [12] The full outstanding amount was then paid to the Fifth Respondent under duress.
- [13] Hereafter, the Applicants approached a different supplier for diesel.
- [14] On the 5th of July 2023, the Applicants received an email from the Second Respondent demanding that the Applicants continue to purchase diesel from the Fifth Respondent, failing which they will conduct themselves in an unlawful manner. The Fifth Respondent and some of its representatives were copied in this communication.

- [15] The Applicants also stated that there was an exchange of communication between the Fifth Respondent and the First to Third Respondents, irrefutable showing the affiliation between the respective parties.
- [16] A written demand was delivered by the Applicants' attorneys to the Respondents, including the Fifth Respondent, requiring them to provide a written undertaking before the 6th of July 2023 at 12:00 that they will cease and desist with their unlawful actions, failing which the Applicants will approach the Court for relief.
- [17] No response was received (including from the Fifth Respondent), resulting in the urgent application being launched and enrolled for hearing on the 6th of July 2023 at 14:00. As stated herein before, an interim order was duly granted.
- [18] The Fifth Respondent's opposition entails the following key aspects:
- 18.1 The Fifth Respondent is not affiliated with the First Respondent and denies engaging in any unlawful conduct. According to the Fifth Respondent this constitutes a misjoinder;
- 18.2 The Applicants' failure to pay for the outstanding fuel led to the unlawful conduct.
- 18.3 The Applicants failed to satisfy the requirements for interdictory relief.
- [19] From the onset it must be noted that the Fifth Respondent does not appear to be directly involved in the threats and other unlawful conduct. No pertinent

information is available as to the conduct of the Fifth Respondent, or its employees, specifically. It appears that the case against the Fifth Respondent rests solely on the fact that the conduct of the remaining Respondents is aimed at benefitting the Fifth Respondent. It is not alleged that they acted upon direct instructions from the Fifth Respondent, nor are any of the Fifth Respondents' employees and / or Board of Directors implicated in any way directly.

Issues that require determination:

[20] The remaining Respondents did not oppose the relief, and final relief should unquestionably be granted against them. This Court is called upon to determine if the interim order should be made final as against the Fifth Respondent specifically.

The Applicable Legal Principles:

[21] As stated before, the Applicants apply for final interdictory relief. It is trite law that motion proceedings for final relief are appropriate only where there is no material dispute of fact evident from the papers before court.

[22] In ***National Director of Public Prosecutions v Zuma***¹ the Supreme Court of Appeal stated:

¹ 2009 (2) SA 277 (SCA) at [26]

'[26] Motion proceedings, unless concerned with interim relief, are all about the resolution of legal issues based on common cause facts. Unless the circumstances are special, they cannot be used to resolve factual issues because they are not designed to determine probabilities.'

- [23] In the well-known decision of ***Plascon-Evans Paints Ltd v Van Riebeeck Paints (Pty) Ltd***² it was stated:

'[The] affidavits reveal certain disputes of fact. The appellant nevertheless sought a final interdict together with ancillary relief, on the papers and without resort to oral evidence. In such a case the general rule was stated by Van Wyk J (with whom De Villiers JP and Rosenow J concurred) in Stellenbosch Farmers' Winery Ltd v Stellenvale Winery (Pty) Ltd 1957 (4) SA 234 (C) at 235E – G, to be:

"... where there is a dispute as to the facts a final interdict should only be granted in notice of motion proceedings if the fact in the applicant's affidavits justify such an order ... Where it is clear that facts, though not formally admitted, cannot be denied, they must be regarded as admitted."

- [24] A failure to heed this basic proposition can (and generally should) result in the application being refused when the disputes of fact on material issues were foreseeable.³

² 1984 (3) SA 623 (A) at 634E – 635D

- [25] This Court is of the view that there is a dispute of fact as to the involvement of the Fifth Respondent in the conduct complained of. Although the Applicants submit that the Fifth Respondent did not distance themselves from the conduct complained of, the explanation tendered by the Fifth Respondent is not untenable. The Applicants provided the Fifth Respondent with one day to respond to their demand – the Fifth Respondent required a reasonable opportunity to consult with their attorney prior to responding to the said demand.
- [26] The Fifth Respondent did in fact, at the first available opportunity, being the 6th of July 2023 and after the order was granted, by means of the letter addressed by its attorneys to Applicants' attorneys unequivocally addressed its denial of involvement in the unlawful actions complained about.
- [27] The submissions made in respect of their involvement is quite circumstantial and evidently placed in dispute. This Court is therefore of the view that motion proceedings are not the appropriate forum to address a factual dispute of this nature.
- [28] One must also bear in mind that unlike an interim interdict that does not involve a final determination of rights of the parties, a final interdict affects a final

³ BR Southwood, **Essential Judicial Reasoning**, Lexis Nexis on p 23

determination of rights.⁴ It is trite law that to succeed with final interdictory relief, the Applicant must show⁵:

- 28.1 A clear right;
- 28.2 An act of interference; and
- 28.3 No other remedy available.

[29] As to a clear right, the existence of the right is a matter of substantive law. Whether the right is clearly established is a matter of evidence. To establish a clear right, the Applicant must prove on a balance of probabilities the right which he seeks to protect.⁶

[30] This Court has no difficulty to find that the Applicants have a clear right susceptible to interdictory relief. The difficulty however lies with the second requirement, being an 'act of interference'. In the case of **Bok v The Transvaal Gold Exploration and Land Co**⁷ where Kotze CJ correctly described the requirement as thus:

'...act actually done by the Company (respondent) showing an interference with the exercise of any alleged rights possessed by the Government (applicant); nor does it appear that there exists any well-grounded apprehension that acts of this kind will be committed by the respondent'

⁴ **Fourie v Olivier en 'n ander** 1971 (3) SA 274 (T)

⁵ **Setlogelo v Setlogelo** 1914 AD 221 at 227

⁶ **Nienaber v Stucky** 1946 AD 1049 at 1053 – 4

⁷ (1883) 1 SAR 75 at 76

[31] It is trite law that the person against whom the interdict is sought must be the person responsible, either as principal or as agent, for the wrong committed or threatened. There must be no doubt as to precisely who is responsible. If there is such doubt, the interdict will be refused⁸.

[32] In ***Goldsmid v The SA Amalgamated Jewish Press Ltd***⁹ it was pertinently stated that a Court will not interdict a Company from committing illegal acts on the mere ground that a servant of the Company has committed such acts, where the company has not only not authorised those acts but has expressly forbidden them. Applying this reasoning to the current matter, there is simply insufficient evidence tying the Fifth Respondent directly to the actions complained about.

[33] On that basis, final interdictory relief against the Fifth Respondent should fail.

[34] As to the remaining Respondents, it is unquestionable that interdictory relief should be granted against them. The Applicants have a clear right, their interference in the said right stands undisputed and there is not other remedy available to the Applicants that would yield the same, or a similar result.

Costs:

⁸ ***Prinsloo v Ned Hervormde or Gereformeerde Church*** (1890) 3 SAR 220

⁹ 1929 AD 441

[35] The Fifth Respondent is substantially successful in its opposition. There is no reason to deprive the Fifth Respondent of its costs.

[36] As to the filing of the further answering affidavit (the 'Answering affidavit to the Applicant's Replying affidavit'), the service and filing thereof was not authorised or permitted by the court as contemplated in **Uniform Rule 6(5)(e)**. This document is thus deemed *pro non scripto* and no costs can be recovered in respect thereof.

[37] Having regard to the complexity of the matter and the importance of the case to the parties, costs to counsel are warranted on Scale B.

[38] The Applicant does not pray for costs against the remaining Respondents. No cost order is therefore made against them.

Order:

[39] **In the result the following order is made:**

39.1 The interim order granted on the 6th of July 2023 is hereby made final against the First, Second, Third and Fourth Respondents;

39.2 No cost order is made against the First, Second, Third and Fourth Respondents;

39.3 The interim order granted on the 6th of July 2023 is hereby discharged as against the Fifth Respondent;

39.4 The First and Second Applicant, jointly and severally, the one paying the other to be absolved, is ordered to pay the costs of the Respondent on a party and party scale, including costs to counsel on Scale B. Such costs shall exclude all costs pertaining to the Fifth Respondent's Answering affidavit to the Replying Affidavit.

M BRESLER AJ

ACTING JUDGE OF THE HIGH COURT,

LIMPOPO DIVISION, POLOKWANE

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POLOKWANE HIGH COURT