Reportable:	YES / NO
Circulate to Judges:	YES / NO
Circulate to Magistrates:	YES / NO

IN THE HIGH COURT OF SOUTH AFRICA

NORTHERN CAPE DIVISION, KIMBERLEY

Case No: 243/2017
Heard on: 11/05/2017
Delivered on: 02/06/2017

In the matter between:

NORTHERN CAPE URBAN TVET COLLEGE **APPLICANT**

And

JOHN PHAHLANE **RESPONDENT**

JUDGMENT

MAMOSEBO J

[1] This is the extended return date of a Rule Nisi granted by Erasmus AJ on 10 March 2017 on an urgent basis. The issues for determination are:

1.1 Whether the Rule Nisi should be confirmed or discharged; and

1.2 Which party, if any, should be held liable for the costs of the application.

[2] The terms of the Rule Nisi granted by Erasmus AJ are amongst others:

2.1 That the Respondent is interdicted and prohibited from entering, and/or be interdicted and prohibited from interfering with the administration and/or day to day running of the Applicant's functions, and/or be interdicted and prohibited from contacting, threatening, assaulting or intimidating any of the Applicant's employees employed at the following places:

2.1.1 The Applicant's Central Office situated at 37 to 41 Long Street, Kimberley;

2.1.2 The Applicant's City Campus situated at Cullinan Crescent, Kimberley;

2.1.3 The Applicant's Moremogolo Campus situated at 777 Nobengula Road, Kimberley;

2.1.4 The Applicant's Phatsimang Campus situated at John Daka Street, Kimberley.

2.2 That the Respondent be interdicted and prohibited from threatening, assaulting, intimidating and/or contacting, either personally or telephonically, the following employees of the Applicant: Mr Clifford Freddie Barnes; Mr Solomon Miti; Mr Brand; Ms Mary van Rensburg; Mr Neo Manong; and Mr Elgin Mokokong;

2.3 That the South African Police Service be directed and authorised to take all reasonable and necessary steps to give effect to this order.

2.4 That the Respondent be ordered to pay the costs of the application on an attorney-and-client scale.

3. The order contained in 2.1 to 2.3 above serve as an interim interdict with immediate effect, pending the finalisation of this application.

[3] The applicant is the Northern Cape Urban TVET (Technical Vocational Education & Training) College established in terms of the Continuing Education and Training Act, 16 of 2006, with its head office situated at Central Office 37 – 41 Long Street, Kimberley. The respondent, Mr John Phahlane, is a lecturer who is employed by the Department of Education and rendered his services to the college.

[4] Although the respondent had raised the issue relating to the *locus standi* of Mr Clifford Barnes, the principal of the college who is responsible for its management and administration, in his answering affidavit his counsel, Adv Eillert, submitted that the issue was abandoned, correctly so in my view. Dr BE Nzimande, MP: Minister of Higher Education and Training addressed a letter to the respondent dated 07 March 2017 and said, *inter alia,* the following:

"In accordance with the Department's delegations signed by the Minister on 14 July 2015, Principals are delegated the authority to handle matters for officials from Salary Level 1 – 8 and Post Level 1 – 3 at Colleges. Therefore it should be specified that the College Principal (Dr CF Barnes) has jurisdiction over your matter."

[5] The background to this application is that the respondent was appointed as a computer science lecturer on the 27 February 2012. A disciplinary enquiry was held against him in 2015 for which he faced 11 charges of misconduct. The charges entail, *inter alia*, that he sent an e-mail to a staff member stating:

"He is not going to let her sodomise him without Vaseline" and "you behave like prior 1994 madams". On 11 September 2015 he accused another colleague on e-mail of using witchcraft and being racist; on 07

August 2015 when served with a warning letter for wearing an African National Congress T-shirt to work which, was against policy, he crumpled the letter and threw it in the trash bin and at the same time shouting at a colleague who delivered the letter to him. He referred to the warning letter as rubbish. When admonished wearing the ANC T-shirt he replied that he was employed by the Department and not by the college and the college policies do not apply to him. Other charges were insubordination and putting the college into disrepute.

[6] The respondent was suspended from work on 18 September 2015 on full pay pending the finalisation of the disciplinary process. He was on the same day served with a letter of suspension ordering him to leave the college premises before 12h00. He refused to sign for receipt thereof. The security personnel could not evict him from the premises until the assistance of the South African Police Services (SAPS) was enlisted and intervened.

[7] During October 2016 the respondent was found guilty on 8 out of the 11 charges. The sanction of immediate dismissal was imposed on him. He lodged an appeal internally with the Department of Education as the process permitted him to do within the prescribed period.

[8] Dr Nzimande wrote in the last paragraph of the letter referred to in para 4 (*supra*) to the respondent informing him that:
"Therefore, after a careful consideration of the deliberations and recommendation by the Appeal Committee, I hereby confirm the sanction as pronounced by the Presiding Officer to dismiss you with immediate effect. As such, your appeal is hereby dismissed."

[9] Mr Eillert submitted that the specified incidences and/or the unacceptable conduct addressed above attributed to the respondent did not just happen in a vacuum but the stopping of the payment of his salary coupled with the manner the applicant dealt with the matter under the circumstances, were contributory factors to be taken into consideration. Counsel conceded, however, that his client's conduct was not justifiable but sought to convince me that in the exercise of my discretion I should discharge the rule.

[10] Adv Van Tonder, arguing for the college, submitted that there are no reasons why the respondent should continue to enter the premises of the college or to contact any person, particularly its listed personnel. Counsel correctly pointed out that the respondent conceded in his answering affidavit to being confrontational. It had to take the intervention of the SAPS on two occasions to remove him from the college premises. The respondent acknowledges that when he became angry he screamed and shouted at the personnel.

[11] The applicant's contention is that the purpose of the application was to protect the college and its employees from the violent and aggressive behaviour of the respondent. What exacerbated matters was that some learners failed a subject because the respondent had failed to submit their scripts. When requested to do so by Ms Gathrie his response was that there were more urgent issues to discuss than marking the scripts. The scripts had not been submitted even at the stage that the disciplinary enquiry was conducted.

[12] The college is an environment for higher learning and accommodates both employees and learners. The conduct of the respondent impacted

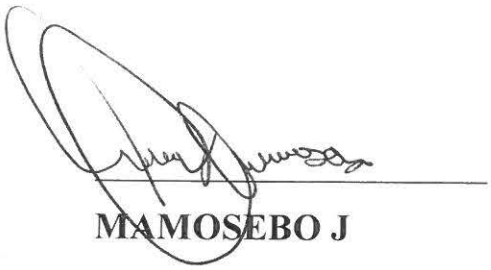
negatively to the environment of learning and teaching and thereby infringed the rights of the learners and the personnel. Adults need to inspire learners with positive attributes and good leadership qualities.

[13] It is trite that for a final interdict to be granted three requirements which must be present are: (1) a clear right; (2) an act of interference; and (3) no other remedy. The applicant has persuasively argued that the right it seeks is to safeguard the interests of its employees and the learners against the violence and aggression displayed by the respondent. Since the outcome of the unsuccessful appeal against his dismissal from employment by the college there is therefore no justification for him to be on its premises. The respondent's past conduct has demonstrated a high level of interference, disturbance and impudence which obliged the intervention of SAPS on at least two occasions to have him removed from its premises. See ***Setlogelo v Setlogelo*** 1914 AD 221 at 227. Regard being had to the circumstances of this case I am satisfied that the applicant cannot be protected by any other remedy and therefore this application ought to succeed because all the requirements for a final interdict are met.

[14] **I now deal with the question of costs**. When Erasmus AJ granted the rule on 10 March 2017 she ordered that costs of proceedings of 9 March 2017 shall be costs in the application. Mr Van Tonder asked that the order for costs should include those that were ordered to be costs in the application: 10 February 2017, 17 February 2017, 24 February 2017, 09 March 2017, 07 April 2017 and 11 May 2017. I agree. However, I am not satisfied that the applicant has made out a case for the costs to be on a scale as between attorney and client. See ***Nel v Waterberg Landbouwers Ko-operatieve Vereeniging*** 1946 AD 597 at 607.

[15] In the result the following order is made:

1. **The R*ule Nisi* is confirmed.**
2. **The respondent is ordered to pay costs of this application which should include the costs for 10 February 2017, 17 February 2017, 24 February 2017, 09 March 2017, 10 March 2017, 07 April 2017 and 11 May 2017 on a party and party scale.**



MAMOSEBO J
NORTHERN CAPE HIGH COURT

For the applicant:	Adv AG Van Tonder
Instructed by:	Engelsman Magabane Inc
For the respondent:	Adv A Eillert
Instructed by:	Geoff Smith Attorneys