



IN THE HIGH COURT OF

SOUTH AFRICA

GAUTENG LOCAL DIVISION, JOHANNESBURG

CASE NO: 134433/2023

<u>DELETE WHICHEVER IS NOT APPLICABLE</u>	
(1)	REPORTABLE: No
(2)	OF INTEREST TO OTHER JUDGES: No
(3)	REVISED: No
DATE	_____
	SIGNATURE

In

the matter between:

INSURANCE SECTOR EDUCATION AND TRAINING AUTHORITY Applicant

and

GRADUATE INSTITUTE OF FINANCIAL First Respondent

SCIENCES (PTY) LTD

QUALITY CONTROL FOR TRADES AND OCCUPATION Second Respondent

JUDGMENT ON LEAVE TO APPEAL

YACOOB J:

INTRODUCTION

1. The applicant seeks leave to appeal an order granted by this court in the urgent court on 4 January 2024. The applicant for leave to appeal was the first respondent in the main application.

2. The essence of the order was an interdict preventing the applicant from implementing, further than it had done, a decision to de-accredit the first respondent, and to take steps to remedy certain of its actions resulting from that decision. The order was cast as an interim order pending the final determination of an existing review application and of part B of the main application under this case number. Part B of the application constitutes a review of the decision which was the subject of the interdict.
3. Since the hearing of the matter the first respondent had brought applications in various urgent courts for a contempt order and for a declaratory order in terms of section 18(2) of the Superior Courts Act, 10 of 2013, that the order I made was interim in nature and therefore still in force despite the application for leave to appeal.
4. Both those applications were unsuccessful, primarily on the basis that the procedure followed by respondent was inappropriate when considering the nature of the matter, and also that the applications did not justify the urgency imposed. For reasons unknown the section 18(2) application was not referred to me as the judge who heard the original matter, even though that is usually the practice in this division. The first respondent requested that I consider and determine that question too. The applicant submitted that this was inappropriate because the court previously seized with the declaratory application had intimated that it was not an application that could be considered on an urgent basis. This court is, however in a different position, as it has already considered the nature of the order before granting it.
5. Before I deal with the grounds of appeal, I deal with the appealability of the order. The first respondent submitted that the order is not appealable because it is an interlocutory order and not final in effect. The applicant, however submitted that an interim order is appealable if it is in the interests of justice.¹ When asked to clarify why it was in the interests of justice that this order be considered appealable, the response was that it is not truly an interim order, but that it has the potential to be final in effect because of the delays of litigation, on which the interim nature of this order depends.

¹ *UDM v Lebashe Investment Group* 2023 (1) SA 353 (CC).

6. I am not convinced by that argument. The delays in litigation may result in an order having a final effect in some specific circumstances, but the applicant was unable to point out what the circumstances were in this case which would lead to that outcome. The applicant did refer to the fact that the respondent has not prosecuted its review application with alacrity. However, the applicant also did not avail itself of the remedies available to it in terms of the rules to bring the proceedings to their conclusion.
7. Nevertheless, it is clear that an interim interdict must be appealable. The fact that section 18(2) of the Superior Courts Act provides that an interlocutory order that is not final in nature and is the subject of an application for leave to appeal or an appeal is not suspended pending decision on appeal in itself shows that the legislature has determined that such orders not final are appealable. The words used are “an interlocutory order” which can be applied to orders made while litigation is still ongoing, and far more transient than an interim interdict of the kind the applicant seeks to appeal. The order must be appealable, and the protection given to the beneficiary of the interim order is then that that order is not suspended pending appeal.
8. The grounds on which the applicant seeks leave are that:
 - 8.1. the decision by the second respondent (“the appeal authority”) on which the applicant’s interdicted decision relies has not been taken on review;
 - 8.2. an interdict ought not to have been granted because it sought to deal with a decision that had already been implemented and not something that would happen in the future;
 - 8.3. the respondent will not suffer irreparable harm because it can bring an application for damages;
 - 8.4. the court ignored the findings of fraud alleged by the applicant;
 - 8.5. the orders granted are different to what is set out in the notice of motion;
 - 8.6. the order should not have been granted in the absence of service of the appeal authority.

9. In my view the third ground clearly has no merit. The ability to claim damages is not always a proper remedy. If the respondent is not, as it alleges, able to continue functioning, it is unclear how it would be able to sustain the litigation required to claim damages.
10. The second ground of appeal, that the interdict deals with past action not future and therefore an interdict was not appropriate, clearly ignores that the interdict portion of the order merely deals with future implementation of the decision. The order also directs the applicant to do certain things that deal with the consequences of the relatively small extent of implementation that had already occurred. Because of the timing of the decision, the real consequences would only have manifested in the future, and an interdict would therefore have been an appropriate order.
11. The fourth ground of appeal makes much of the allegations of fraud and the findings of the report. It must be emphasised that there is no intimation in the report that the accreditation of the respondent had been obtained by fraud, or that the dishonesty that had been found pertained in any way to the ability of the respondent to carry out proper training. Had it done so, the decision of the court must have been different. The court considered the allegations and found them not to support a finding that the balance of convenience favoured the applicant.
12. The fifth ground, that the order granted is not limited to what was contained in the notice of motion, refers to two positive actions the applicant was directed to take. The first is a direct consequence of the interdict of the implementation of the decision, that is, restoring the respondent's access to the applicant's portal. The second is that the applicant was directed to publish a letter to all those who had already been informed of the de-accreditation, confirming that the respondent's accreditation was still valid.
13. Both those orders were supported by the affidavits, and were canvassed at the hearing of the matter. If the decision was not to be implemented, there is no prejudice to the applicant in carrying out those orders.
14. The first and sixth grounds are related. The decision by the applicant to de-accredit the first respondent was taken after a decision was made by the appeal

authority to dismiss an appeal by the first respondent against a previous de-accreditation decision, which was based on the report that is the subject of the existing review application. The appeal authority had undertaken to not make the decision until the existing review application had been determined. The applicant contends that the order ought not to have been granted in the absence of a review of the appeal authority's decision. The applicant also contends that there was not proper service on the appeal authority.

15. The appeal authority was joined and the application was emailed to it. The application was brought at a time when most offices were closed, and I was satisfied that service by sheriff would not have accomplished anything in those circumstances. The failure to serve by sheriff was, in my view, overcome by the emailed service.

16. The first respondent's failure to review the decision of the appeal authority was fully canvassed at the main hearing. The first respondent contends that the letter from the appeal authority does not constitute a decision, and that even if it did, it had not received it. The contentions that the first respondent had not received the letter were included in the founding affidavit and the answering affidavit does not establish that the first respondent did in fact receive the letter. It is for this reason that the first respondent's failure was not considered fatal to this application, as it appeared that the applicant was relying on its and the second respondent's procedural shortcomings to try and hamstring the first respondent.

17. The points raised by the applicant are, on the face of it, persuasive and may without consideration of the facts that were before the court lead to a conclusion that another court may come to a different decision. However, when considering the specifics of what was before the court, I am not satisfied that another court would come to a different conclusion.

18. I am also satisfied that the order was intended to be, and is, interim in nature, including the parts of the order directing the applicant to take positive action, and therefore that it continues to have effect in accordance with section 18(2) of the Superior Courts Act.

19. For these reasons I make the following order:

1. The application for leave to appeal is dismissed with costs.
2. It is declared that the order granted on 4 January is interim in nature and falls within the ambit of section 18(2) of the Superior Courts Act.

S. YACOOB
JUDGE OF THE HIGH COURT
GAUTENG LOCAL DIVISION, JOHANNESBURG

Appearances

Counsel for the Applicant: E Mokutu SC, M Marongo

Briefed by: Lebea Incorporated

Counsel for the Respondent: M J Gumbi, FB Mahomed

Briefed by: TS Law Incorporated

Date of hearing: 14 March 2024

Date of judgment: 08 April 2024