HIGH COURT OF SOUTH AFRICA
(GAUTENG DIVISION, PRETORIA)

CASE NO: B958/2023

DELETE WHICHEVER IS NOT APPLICABLE
(1) REPORTABLE: ~~YES~~/NO
(2) OF INTEREST TO OTHERS JUDGES: YES/~~NO~~
(3) REVISED

28.11.2023 .....
DATE SIGNATURE

In the matter between:

NICHOLAS YALE (PTY) LTD Applicant

and

THE NATIONAL COMMISSIONER: SOUTH AFRICAN POLICE SERVICES First Respondent

BRIG.PN SIKHAKHANE Second Respondent

THE MINISTER OF POLICE Third Respondent

REASONS FOR ORDER

NHARMURAVATE. AJ

Introduction:

[1] The Respondents caused a letter to be written wherein they are seeking reasons for a finding made on the 15th of November 2023 wherein this court dismissed the claim for storage fees by the Applicant and awarded costs of the application to the Applicant.

[2] I note that Counsel for the Respondent was by himself in court. He was not in the presence of his Attorney nor was there any client present with him. It was only the Applicant who had his Attorney present in court. I highlight the importance of the presence of the relevant parties for each team during the hearing to avoid any confusion perhaps further instructions would have been furnished to the Respondents Counsel in furtherance of his argument as I made my reasons clear on that date. The Respondents are also urged to obtain the record of the proceedings.

[3] The matter before me was not complex. It was mainly concerning costs as one would have expected the arguments did not exceed 30 minutes for Counsel combined. Both Counsel understood that the merits were dealt with by another court and the hearing on the 15 of November 2023 was mainly an argument for costs.

[4] I shall briefly summarize the argument on costs (this is excluding the argument on storage fees) in the following manner as follows:

The Applicant's Argument

[5] The Applicant argued that he had been successful in the urgent court as he was able to obtain substantial orders which he sought in line with the application filed.

The Respondents Argument

[6] The Respondents argument was twofold and can be crystalized as follows that:

6.1 Firstly, the urgent court application was not necessary; and

6.2 Secondly the orders obtained by the Applicant on that date were not necessary because the Respondents had already offered same before the Applicant could even lodge the urgent court application.

[7] The problem with the argument above is that the argument raised is based on the merits of the matter which had already been decided by another court. The orders obtained whereas follows that:

*7.1 "The Respondent must insofar it has not yet been done forthwith authorized the release of the remaining firearms specified in import permit P 19307738 as per the copy attached to this notice of motion marked "**NOM1**".*

*7.2 The applicant is ordered to permanently engrave or stamp onto each firearm listed on import permit P 19307738 as per the copy attached to this Notice of Motion marked as annexure "**NOM1**", a serial number corresponding with the numbers and letters on the permanent import payment within 20 days of receipt of the firearms and to provide the proof thereof by registered Gunsmith that this has been done to the Registrar of firearms whereafter the firearms may be listed on the applicants dealers stock*

7.3 Both the parties are granted leave to file supplementary affidavits if so, advised in respect of the issues postponed.

7.4 The dispute in respect of storage costs and determination of this the costs of this application is postponed sine die for a later determination."

[8] Considering the orders above verses the Applicants notice of motion filed in urgent court, the very first prayer sought was that the application be declared urgent. The fact that we have orders as noted above from the urgent court means that the urgent court deemed that the matter was urgent. Therefore, the argument made by the Respondents that the urgent application was

unnecessary is therefore flawed as the orders are still in existence. The Applicant was at the very least successful in having his matter heard in urgent court. In line with the notice of motion the Applicant obtained three orders sought.

[9] I was not ceased with the matter as a court of review or an appeal court. The court was called upon to decide the issue of costs.

[10] It was common cause that the order of my sister Holland-Muter J dated the 23rd of March 2023 is still in existence. This order was obtained after the urgent court considered the merits of the application. This order has not been appealed or reviewed. In my opinion I cannot therefore make a consideration that the orders which were granted by the urgent court were unnecessary based on the argument that the same had been offered by the Respondents before the Applicants lodged the urgent court application. The argument raised by the Respondent's Counsel should have been raised in the urgent so that a consideration can be made by that court as it dealt with the merits.

[11] The fact that there is a court order in that regard means that the urgent court deemed that the matter was urgent at the time. In my opinion this means the matter was necessary for the urgent court. Otherwise, it would have been struck from the roll for the lack of urgency. I was not involved in urgent court and the urgent court also did not direct another court to revisit the merits. Either of the two scenarios happened that is:

11.1 The Respondents Counsel argued the same points of the application sought not being necessary. However, the urgent court may have been not convinced by the argument and granted the orders in the notice of motion except for the issue of storage fees and costs.

11.2 Or there was an agreement that the matter was urgent, and these points were raised during the costs argument but not raised in a proper forum.

[12] I do recall making enquiries to Mr Thoma the Respondents Counsel if the argument that he was raising of unnecessary orders granted inclusive of the

urgent application was done in urgent court to which he answered in the affirmative. That then clearly informed me that the urgent court considered that argument and did not find in its favour. Had the urgent court found in favour of this argument, it would have either struck the matter from the roll because it lacked urgency thereof as urgency would have been self-created by the Applicant. Alternatively, the matter would have been dismissed in its entirety. However, that was not the outcome that we have.

[13] In the midst is an order that still stands which the parties have a constitutional obligation to obey[1]. The considerations which I was asked to make by the Respondents were amounting to me sitting as a court of appeal, which I was not. Mr Thoma even conceded that the rightful forum which should have considered the necessity or the lack of necessity thereof argument was the urgent court.

[14] It is pertinent to remember that this scenario is based on the backdrop of an urgent court application which I was not involved in. It was therefore not for me to revisit the merits which had already been concluded by another court without being seized with an appeal. The argument raised by the Respondent's Counsel was not made in a proper forum alternatively made at a very late stage.

[15] It is evident on the court order that most of the orders sought by the Applicant were granted by the urgent court. In my opinion the urgent court concluded that the orders sought by the Applicant in his notice of motion were necessary hence them being made an order of court. I therefore do not possess any power to pronounce that the urgent application which resulted in the court order date March 2023 was not necessary as a basis for ordering costs to be borne by each party.

[1] Sect 165(5) An order or decision issued by a court binds all persons to whom and organs of state to which it applies.

[16] In my opinion the Applicant was successful in urgent court. There was no dismissal of his matter. It is trite law that a successful party is thereafter awarded costs. **Ferreira** v **Levin N.O. and others; Vryenhoek and others v Powell N.O. and oth**ers:

"[155] ... *One of the general rules is that, although an award of costs is in the discretion of the Court, successful parties should usually be awarded their costs and that this rule should be departed from only where good grounds for doing so exist.*[2]"

Conclusion

[17] In my opinion there were no proper grounds advanced by the Respondent for me to deviate from the norm that a successful party is awarded costs.The Respondents have the wrong end of the stick, reasons should have been sought when the orders were granted in urgent court (regard being heard to the unnecessary urgent application argument). Rather, leave to appeal should have been sought if the Respondents were aggrieved by the decision made. as that is the basis, I had to consider in ordering costs.

N NHARMURAVATE
ACTING JUDGE OF HIGH COURT
GAUTENG DIVISION, PRETORIA

HEARD ON: 15 NOVEMBER 2023

[2] 1996 (1) SA 984 (CC)

JUDGEMENT DELIVERED ON:	NOVEMBER 2023
COUNSEL FOR THE APPLICANTS:	ADV SNYMAN SC
INSTRUCTED BY:	MJ HOOD & ASSOCIATES
COUNSEL FOR THE RESPONDENTS:	ADV THOMA
INSTRUCTED BY:	THE STATE ATTORNEY