HIGH COURT OF SOUTH AFRICA

(GAUTENG DIVISION, PRETORIA)

(1) REPORTABLE: NO.
(2) OF INTEREST TO OTHER JUDGES: YES
(3) REVISED. YES
DATE:

SIGNATURE
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Case no. 59344/2021

In re:

MINISTER OF POLICE Applicant

and

DAVID CHAUKE Respondent

(Id no. 740203 5415 083)

JUDGMENT

The judgment and order are published and distributed electronically.

VAN NIEKERK PA, AJ

INTRODUCTION:

[1] Applicant seeks relief in the Applicant's Notice of Motion against the Respondent in the following terms:

> "*1. Directing and interdicting the respondent from:*
>
> *1.1 instituting any further legal processes against the applicant for proceedings and/or disputes and/or causes of action of a similar nature and/or the extent that any of the disputes pursued by the respondent is related to and/or emanates from any of the issues and/or any of the claims already adjudicated and finalised by Courts generally (including the Constitutional Courts), particularly under case numbers 18231/2009, 10482/2010 and lately 6209/2020 in the above Honourable Court and belatedly dismissed by the Constitutional Court under case numbers CCT140/2021 as set out below;*
>
> *1.2 instituting any legal proceedings against the applicant and/or any of its representatives in their personal and/or professional capacity for any disputes emanating from the claims under case numbers 18231/2009, 10482/2010 and 6209/2020 (and the related applications for leave to appeal), without first obtaining the permission of that Court, or any inferior Court or any Judge thereof or that inferior Court, and that any such permission not be granted unless the Court or Judge is satisfied that the proceedings are not an abuse of the process and there is a prima facie ground for the proceedings.*
>
> *2. Declaring and ordering that:*
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> *2.1 the respondent prior to instituting any new proceedings and/or continuing with the existing cause of action and/or any of the claims emanating from or factually similar to the claim and/or*

issues under case numbers 18231/2009, 10482/2010 and 6209/20, be required to:

2.1.1 first obtain a written leave of the relevant Court, or any inferior Court or any Judge thereof, to institute or proceed with such specified legal proceedings, but

2.1.2 that prior to seeking the leave of the relevant Court, or any inferior Court of any Judge thereof or that inferior Court, to institute or proceed with any legal proceedings (including the existing proceedings);

2.1.2.1 inform on written notice to the Deputy Judge President or person in charge in the inferior Court that, prior legal proceedings have been instituted to declare him a vexatious litigant and that, he is restrained from institution of certain legal proceedings against the applicant or its representatives;

2.1.2.2 within a time to be specified by that Court, or any inferior Court or any Judge thereof or that inferior Court, furnish a written notice setting out in full, his basis for seeking such leave to the Deputy Judge President or the person in charge in the inferior Court; and that

2.1.2.3 upon but not prior to obtaining written permission from the Deputy Judge President or the person in charge in the inferior Court, the respondent initiate correspondence with the applicant and/or its representatives to inform the applicant and/or its representatives of his intention to seek such leave to institute legal proceedings against the applicant and/or its representatives and to request the applicant and/or its representatives to those

intended proceedings, to make submissions to the relevant Deputy Judge President or the person in charge in the inferior Court, in response to the respondent's intention to seek such leave.

2.1.3 That, in the event of the relevant Deputy Judge President or the person in charge in the inferior Court, granting leave to the respondent to institute or proceed with any legal proceedings (including this application) that the respondent is ordered to and hereby required to provide security for legal costs for the respondents or defendant's in those proceedings, in the amount and form to be determined by the Registrar".

[2] At the hearing of the matter Applicant presented a draft order in the same terms as the Notice of Motion, with the further provision of a declaratory order in terms whereof Respondent is declared a vexatious litigant in terms of to the provisions of Section 2(1)(b) of the Vexatious Proceedings Act 3 of 1996 ("the Act"). Considering the nature of the relief framed in the Notice of Motion and the averments contained in support thereof, I am of the view that the inclusion of the declaratory order in the proposed draft order declaring the Respondent to be a vexatious litigant in terms of the Act in circumstances where such relief was not initially included in the Notice of Motion does not prejudice the Respondent as it is a logical *sequitur* of the proceedings instituted against the Respondent should the Applicant be successful in the relief prayed for.

[3] Section 2(1)(b) of the Act reads:

"*If, on an application made by any person against whom legal proceedings have been instituted by any other person or who has reason to believe that the institution of legal proceedings against him is contemplated by any other person,*

the court is satisfied that the said person has persistently and without any reasonable ground instituted legal proceedings in any court or in any inferior court, whether against the same person or against different persons, the court may after hearing that other person or giving him an opportunity of being heard, order that no legal proceedings shall be instituted by him against any person in any court or any inferior court without the leave of that court, or any judge thereof, or that inferior court, as the case may be, and such leave shall not be granted unless the court or judge or the inferior court, as the case may be, is satisfied that the proceedings are not an abuse of the process of the court and that there is prima facie ground for the proceedings".

[4] The relief which Applicant applies for is declaratory and interdictory in the final sense, and the requirements for such relief are trite law, namely the establishment of a clear right, actual or reasonably apprehended injury, and the lack of a satisfactory alternative remedy.[1]

[5] Section 21(1)(c) of the Superior Courts Act 10 of 2013 confers jurisdiction on the High Court the power to *"… in its discretion, and at the instance of any interested person, to enquire into and determine any existing, future or contingent right or obligation, notwithstanding that such person cannot claim any relief consequent upon the determination."* This section clearly confers on the High Court the power to issue a declarator framed in the terms which the Applicant applies for.

[6] On analysis of Section 2(1)(b) of the Act the jurisdictional requirements to make an order that a person may not institute legal proceedings against another person without prior leave of the court been obtained are the following, namely:

[1] *Sanachem (Pty) Ltd v Farmers Agri-Care (Pty) Ltd 1995 (2) SA 781(A) at 789 B - C*

(i) the court must be satisfied that the said person has persistently and without any reasonable grounds instituted legal proceedings in any court or any inferior court; and

(ii) the court must be satisfied that the proceedings instituted in terms of Section 2(1)(b) of the Act are in itself not an abuse of the process of court;

and

(iii) there must be *prima facie* grounds for the proceedings (this is clearly a reference to the proceedings in terms of Section 2(1)(b) of the Act.

[7] Section 2(1)(b) of the Act which is similar to Section 2(1)(c) of the Act, requires that the Court must first be satisfied that the person against whom relief is sought under the Act persistently and without reasonable grounds instituted legal proceedings, whereafter the Court must be satisfied that the proceedings requesting such relief in itself does not constitute an abuse of the process of Court and that there are prima facie grounds for the proceedings. The first enquiry clearly relates to an evaluation of the available factual evidence on the issue of persistent and unreasonable institution of legal proceedings, and the second enquiry requires the exercise of a value judgment based on a consideration of the available information which may assist the Court to exercise its discretion afforded in terms of Section 2(1) of the Act.

[8] The provisions of Section 2(1) of the Act place a limitation on the right of access to court enshrined in terms of Section 34 of the Constitution.[2] In ***Beinash & Another v Ernest & Young & Another***[3] it was held that the purpose of the Act was to put a stop to persistent and ungrounded legal proceedings. In this regard, the court held that:

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[2] *Constitution of the Republic of South Africa, Act no. 108 of 1996*

[3] *1999 (2) BCLA 125 (CC)*

> "*[15] In order to evaluate the constitutionality of the impugned section, it is necessary to have regard to the purpose of the Act. This purpose is "to put a stop to persistent and ungrounded institution of legal proceedings". The Act does so by allowing a court to screen (as opposed to absolutely bar) a "person [who] has persistently and without any reasonable ground instituted legal proceedings in any Court or inferior court". This screening mechanism is necessary to protect at least two important interests. These are the interests of the victims of the vexatious litigant who have repeatedly been subjected to the costs, harassment and embarrassment or unmeritorious litigation and the public interest that the functioning of the courts and the administration of justice proceeding unimpeded by the clog or groundless proceedings*".

In such judgment it was held that the provisions of Section 2(1) of the Act is not unconstitutional and that the limitation serves as an important purpose relevant to Section 36(1)(b) of the Constitution.

[9] It was held that vexatious claims include claims that are "*frivolous, improper, instituted without sufficient ground, to serve solely as an annoyance to the defendant*"[4]. "*Legal proceedings*" in the context of Section 2(1) of the Act includes procedures permitted by the rules of court to facilitate the conduct of all types of litigation, including all steps relating to the execution of a judgment, and all matters ancillary to the legal process[5].

[10] In the Applicant's Founding Affidavit the history of litigation between Respondent and Applicant is set out comprehensively and provides a full factual background in support of the relief claimed against Respondent. Respondent filed an "*Opposing Affidavit*" which does not dispute any of the averments relating to the history of the litigation between the parties but can only be described as a barely comprehensible attempt at a re-visitation to issues which are *res judicata*, more fully referred to hereunder. The factual background

[4] *Cohen v Cohen & Another 2003 (1) SA 103 CPD*
[5] *Absa Bank Ltd v Dlamini 2008 (2) SA 262 (T) at 25*

to the history of litigation between the parties as set out in the Applicant's Founding Affidavit may therefore be accepted as facts that are common cause between the parties and should be evaluated in order to determine whether or not Respondent persistently and without good cause instituted legal proceedings against Applicant.

[11] The history of litigation between the parties commenced during 2009 when the Respondent instituted action against the Applicant and the Minister of Justice and Constitutional Development (as it then was) under case no. 09/18231 in the Gauteng High Court, Johannesburg, claiming damages in the exorbitant amount of six billion rands, following a successful appeal against a conviction and sentence of *inter alia* corruption of which the Respondent was found guilty in 2007. The summons issued by Respondent against the Applicant and the respective Minister referred to *supra* was materially defective and in 2011, during a hearing of an exception against such summons the matter was postponed by Acting Judge Bashall who directed and requested that the Respondent (plaintiff in that action) obtain assistance from a Law Clinic.

[12] However, during 2010 and before the matter under case no. 09/18231 was dealt with by Bashall AJ, Respondent issued another summons against Applicant and the Minister of Justice and Constitutional Development under case no. 10/10482 on the same cause of action as the matter under case no. 09/18231. This resulted in the Applicant (defendant in those actions) raising various special pleas to such claim and on 15 April 2014 Windell J. upheld one of the special pleas and dismissed the Respondent's claim in totality.

[13] Respondent filed an application for leave to appeal against the judgment of Windell J, which application for leave to appeal was dismissed. During May 2014 the Applicant applied for leave to appeal against the decision of Windell J under case no. 20172/14 to

the Supreme Court of Appeal ("SCA"), and in this application Respondent, without providing any rational reasons therefore, joined two additional respondents being the President of the Republic of South Africa as well as the Judge President of the South Gauteng High Court. This application for leave to appeal was dismissed by the SCA on 21 July 2014 and Respondent was ordered to pay the Applicant's costs. Following the dismissal by the SCA of that application, which effectively was a dismissal of the claims instituted by the Respondent against the Applicant, the Respondent petitioned the Constitutional Court ("CC") under case no. 143/14 and in this application for leave to appeal Respondent joined the President of the SCA as a respondent. This application for leave to appeal was dismissed by the CC on 30 June 2014, which effectively brought to finality a claim which persisted for 5 years.

[14] Some 4 years later, during 2018, Respondent launched motion proceedings in the Gauteng Division of the High Court, Johannesburg, under case no. 10/10482 as well as 09/18231 which applications were based on the same *causae* of action and claimed relief similar to the relief finally disposed of by the SCA and CC under case no. 20172/14 and 143/14 referred to *supra* respectively. In these applications the Respondent in his capacity as the Applicant now joined the Applicant to this application in his capacity as Respondent together with 15 other respondents including virtually every Government Department, and escalated the claim from R6 billion to R300 billion. On 24 November 2018 Mashile J. dismissed such application with costs on the basis that the actions dating from 2009 and/or 2010 referred to *supra* have been finalised by Windell J in 2014. Additional to this application of the Respondent, Respondent launched an application to rescind the 2014 judgment of Windell J on the basis that it was granted in error and induced by fraud. This application was also dismissed with costs by Mashile J who then

made an order barring the Respondent to approach the court again on the same claim prior to paying the Applicant's costs.

[15] Unperturbed, and during December 2018, the Respondent approached the CC under case no. 303/18 for direct access claiming the following relief:

> "*1. That the decision order of Justice Mashile on the 27th/11/2018 heard on the 26th of November 2018 should be reviewed and set aside as on the grounds for appealing the orders. (sic)*
>
> *2. That the decision of Justice Bashall dated 11 August 2011 on case 18231/2009 should be stayed on the court roll.*
>
> *3. That the decision of Justice Lamont (Burochowitz) on roll 2683/18, 10/2012 should stayed on the roll and be varied.*
>
> *4. That the decision of Justice Mashile heard on the 27/11/2018 and judgment delivered on the 29th/11/2018 should also be varied;*
>
> *5. That the judgement decision of Justice Windell dated the 15th of April 2014 should be nullified and set void including an interlocutory application for a leave to appeal thereof in whole;*
>
> *6. That the decision in the corum of per Navsa JJA Swain in the Supreme Court of Appeal of South Africa on case 20172/2014 should be nullified and set void in whole". (sic)*"

[16] The Respondent's application for direct access referred to supra was dismissed by the CC on 4 February 2019. During July 2019, having been dismissed by the CC, Respondent petitioned to the SCA effectively seeking an order setting aside the order of the CC and again seeking to have the orders of Mashile J and Windell J referred to *supra* set aside. In this application for direct access to the CC Respondent joined the Chairman of Capitec Bank, The Minister of Finance, The Governor of the SA Reserve

Bank, The National Credit Regulator, and The Ombudsman for Banking Services as additional respondents and included an additional claim for 8 billion United States Dollars for a so-called "*research fund*".

[17] Needless to say, this application was also dismissed by the SCA which then prompted the Respondent to again petition the CC to appeal the order of the SCA. In this petition to the CC, the President of the SCA, the Judge President of the South Gauteng High Court, Judges Windell, Lamont, Burrowchowitz, Bashall, Van der Merwe and Mashile were all joined as respondents. This application was also dismissed by the CC.

[18] Having been dismissed by the SCA on four occasions, and the CC on three occasions, during January 2020 the Respondent launched a new application to this court under case no. 6209/2020 wherein Respondent joined 33 parties (mostly referred to *supra*) and claiming the amount of R9 572 164 914.15 (Nine Billion Five Hundred and Seventy Two Million One Hundred and Sixty Four Thousand Nine Hundred and Fourteen Rands and fifteen cents) for loss of an industrial and home theatre system allegedly removed by members of the South African Police Services from the Respondent's residence during 2007, and for damages of R6 500 000 000,00 (Six Trillion Five Hundred Billion Rands) following the Respondent's alleged unlawful arrest in 2007. This action is again based on the same cause of action repeatedly being dismissed, being the alleged unlawful arrest and detention of the Respondent. This action suffered the same fate as the previous actions instituted by the Respondent being dismissed on exception stage, and was again appealed by the Respondent without success to both the SCA and the CC.

[19] It must be remarked that the history as set out *supra* is but a condensed account of the plethora of litigation instituted by the Respondent and does not include the history of

procedures initiated by Respondent in various other quasi-judicial forums against the Applicant, or all interlocutory procedures employed since 2009.

[20] The legal proceedings instituted by Respondent all have the following salient features namely:

(i) claims are so exorbitantly quantified that it can only draw and inference or irrationality and/or malice;

(ii) there is a consistent failure to disclose a discernable cause of action duly formulated in terms of the provisions of either Rule 18 and/or Rule 6 of the Uniform Rules of Court;

(iii) persons and/or institutions and/or entities which have no interest in the matter are joined as parties without any rational reason therefore, and judges who have made any finding unfavourable to the Respondent at any stage have been joined in subsequent proceedings. It must be noted that not once did any judge find merit in any legal proceedings instituted by Respondent;

(iv) there is a repetitive institution of proceedings based on the same purported cause of action which is repeatedly dismissed either directly or by implication in the High Court, the SCA and the CC resulting in Respondent thereafter simply instituting new proceedings where the alleged *quantum* of damages is increased, and additional parties are joined as respondents without any sense of rationality.

[21] In summary, the history of the Respondent's institution of various actions and applications, primarily against the Applicant, is in my view the proverbial textbook example of vexatious proceedings and without any doubt display a pattern of persistent litigation without any reasonable grounds. In the Founding Affidavit, the deponent

further explains how the Respondent continues to proverbially bombard the Applicant's offices with substantial volumes of email correspondence on a regular basis, at times daily. As of necessity, these documents have to be attended to by personnel employed by the Applicant. In this regard it is to be noted that Respondent sent correspondence by way of email to the Registrar of this court, which purports to be a copy of a "*Practice Note*" shortly before this matter was to be heard. In such email the Respondent included as co-recipients *inter alia* the NASA Mars Mission, various Judges of this Division (both Johannesburg and Gauteng), the Registrar of the Deputy Judge President of this Division, and Mr Bill Gates.

[22] Considering the aforesaid, in my view the Applicant has illustrated a clear right to the relief claimed. The prejudice to Applicant who is required to expend valuable resources in dealing with the irrational conduct of the Respondent is real and on-going, and this consideration also applies to various Judges of this Division, the SCA and the CC who are proverbially dragged into the litigation initiated by Respondent. This court, the SCA and the CC are forced to expend resources and time to repeatedly deal with the Respondent's relentless irrational efforts at litigation. I am of the view that the various claims instituted by the Respondent falls squarely within the description of vexatious claims referred to in the authority of *Cohen v Cohen & Another* quoted *supra*.

[23] It is further clear that the Respondent will not desist in his irrational institution of proceedings unless an order issue preventing the Respondent from doing so. There is no alternative remedy available to the Applicant save the remedy awarded to Applicant in terms of the provisions of Section 2(1) of the Act. There is no basis to find that the institution of this application constitutes an abuse of the process of Court, and there are clear prima facie grounds for these proceedings.

[24] Lastly, it needs to be noted that Khumalo J declared the Respondent a vexatious litigant against the Reserve Bank on 21 January 2023 under case number 57818/2020. Respondent launched an "Application for review'' to the Constitutional Court against this order and in that application irrationally joined applicant in these proceedings as a respondent and claims monetary relief against applicant being damages similar to that claimed in the actions referred to *supra.*

[25] In the result, I am of the view that the Applicant has satisfied the requirements of Section 2(1)(b) of the Act and I therefore make an order in the following terms:

1. The respondent is declared a vexatious litigant pursuant to the provisions of section 2(1)(b) of the Vexatious Proceedings Act 3 of 1956.

2. The respondent is interdicted from:

2.1. instituting any further legal processes against the applicant for proceedings and/or disputes and/or causes of action of a similar nature and/or to the extent that any of the disputes pursued by the respondent is related to and/or emanates from any of the issues and/or any of the claims already adjudicated and finalised by Courts generally (including the Constitutional Court), particularly under case numbers 18231/2009, 10482/2010 and lately 6209/2020 in this Court and belatedly dismissed by the Constitutional Court under case numbers CCT 140/2021 as set out below;

2.2. instituting any legal proceedings against the applicant and/or any of its representatives in their personal and/or professional capacity for any disputes emanating from the claims under case numbers 18231/2009, 10482/2010 and 6209/2020 (and the related applications for leave to appeal), without first obtaining the permission of that Court, or any inferior Court or any Judge thereof or that inferior Court, and that any such permission not be granted unless the Court or Judge is satisfied that the proceedings are not an abuse of the process and there is a prima facie ground for the proceedings.

3. It is ordered that:

3.1. the respondent prior to instituting any new proceedings and/or continuing with the existing cause of action and/or any of the claims emanating from/or factually similar to the claim and/ or issues under case numbers: 18231/2009, 10482/2010 and 6209/20, be required to:

3.1.1. first obtain a written leave of the relevant Court, or any inferior Court or any Judge thereof, to institute or proceed with such specified legal proceedings; but

3.1.2. that prior to seeking the leave of the relevant Court, or any inferior Court or any Judge thereof or that inferior Court, to institute or proceed with any legal proceedings (including the existing proceedings):

3.1.2.1. inform on written notice to the Deputy Judge President or person in charge in the inferior Court that, prior legal proceedings have been instituted to declare him a vexatious litigant and that, he is restrained from institution of certain legal proceedings against the applicant or its representatives;

3.1.2.2 within a time to be specified by that Court, or any inferior Court or any Judge thereof or that inferior Court, furnish a written notice setting out in full, his basis for seeking such leave to the Deputy Judge President or the person in charge in the inferior Court, and that

3.1.2.3 upon but not prior to obtaining written permission from the Deputy Judge President or the person in charge in the inferior Court, the respondent initiate correspondence with the applicant and/or its representatives to inform the applicant and/or its representatives of his intention to seek such leave to institute legal proceedings against the applicant and/or its representatives and to request the applicant and/or its representatives to those intended proceedings, to make submissions to the relevant Deputy Judge President or the person in charge in the inferior

Court, in response to the respondent's intention to seek such leave.

3.1.3. That, in the event of the relevant Deputy Judge President or the person in charge in the inferior Court, granting leave to the respondent to institute or proceed with any legal proceedings (including this application) that the respondent is ordered to and hereby required to provide security for legal costs for the respondents or defendant's in those proceedings, in the amount and form to be determined by the Registrar.

4. In this order, the phrases "Court and/or inferior Court" shall mean any Division of the High Court of South Africa or in any Magistrate Court contemplated in section 166(d) and (e) of the Constitution of the Republic of South Africa, 1996.

5. No application and/or action instituted by the respondent in any Court or inferior Court shall have any force prior to strict compliance with paragraphs 2 and 3 above

6. The Registrar is directed to cause a copy of this order to be published in the Government Gazette, as contemplated in section 2(3) of the Act.

7. The respondent shall pay the costs of this application.

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P A VAN NIEKERK

ACTING JUDGE OF THE GAUTENG DIVISION, PRETORIA

Appearances:

For the Applicant: ADV. M M MOJAPHELO

ADV G MAMABOLO

Instructed by: STATE ATTORNEY-PRETORIA

For the Respondent: IN PERSON