| Reportable: | YES / NO |
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**IN THE HIGH COURT OF SOUTH AFRICA**
**(NORTHERN CAPE DIVISION, KIMBERLEY)**

**CASE NO: 2086/21**
**Heard on: 28 April 2022**
**Delivered on: 15 July 2022**

In the matter between:

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| **MAREMANE COMMUNAL PROPERTY ASSOCIATION REGISTRATION NUMBER: CPA/04/0745/P)** | Applicant |
| and | |
| **MINISTER OF POLICE** | First Respondent |
| **STATION COMMANDER: SOUTH AFRICAN POLICE SERVICE, POSTMASBURG** | Second Respondent |
| **STATION COMMANDER: SOUTH AFRICAN POLICE SERVICE, UPINGTON** | Third Respondent |

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**JUDGMENT ON APPEAL**

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**Introduction**

1 This is an application for leave to appeal brought by the respondents (‘’Minister of Police; Station Commander: South African Police Service, Postmasburg; Station Commander: South African Police Service, Upington’’), against an order of this Court handed down on 25 March 2022, directing the second respondent (‘’Station Commander: Postmasburg) to:

1.1. execute the orders granted by this Court under case numbers 1815/2019 and 2086/21, respectively; and

1.2. pay the costs of the application under case number 2086/21 on a punitive scale as between attorney and client scale.

2 The application is opposed by the applicant (Maremane Communal Property Association). The background facts and the grounds of appeal are set out below.

**Background facts**

3 This matter has a long history. It dates to 2019 when a group of community members (Boipelo Mojaki and 19 others) blockaded and/or obstructed the road giving access to portion 7 of the Farm Driehoekspan 435, district Hay, Northern Cape; remaining extent of the Farm Driehoekspan 435, district Hay, Northern Cape; remainder of portion 2 of the Farm Kapstewel 436 situated in the district of Hay, Northern Cape (''the *properties*").

4 The applicant reacted to the blockade/obstruction by launching an urgent application in this Court for an order *inter alia*, interdicting the respondents in that mater from blockading and/or obstructing the road leading to the properties, and interfering with the operations of Afrimang (Pty) Ltd (''the *mine*"). On 16 August 2019 this Court *per* Williams J issued a *rule nisi* calling

upon the respondents in that case to show cause why they should not be ordered and restrained from *inter alia*:

4.1. blockading/obstructing the road giving access to portion 7 of the Farm Drieheokspan 435, district Hay, Northern Cape; remaining extent of the Farm Driehoekspan 435, district Hay, Northern Cape; and remainder of portion 2 of the Farm Kapstewel 436 situated in the district of Hay, Northen Cape (''the *properties"*);

4.2. unlawfully erecting structures on the properties;

4.3. unlawfully issuing site permits/permission to occupy the properties;

4.4. interfering with the operations of Afrimang (Pty) Ltd (''Afrimang'' or the ''mine'') and its stakeholders, members, contractors and business associates;

4.5. harassing members of Afrimang and its stakeholders, members, contractors, and business associates."[1]

5 The *rule nisi* was confirmed by Acting Justice Vuma on 1 November 2019, and the issue of costs was postponed to 29 November 2019.[2]

6 Upon receipt of the Orders (*i.e,* the *rule nisi* issued by Williams J on 16 August 2019 under case number 1815/19 (annexure ''FA4''), as well as the subsequent confirmation thereof by Acting Justice Vuma on 1 November 2019 (annexure ''FA2''), the applicant approached the Station Commander and members of the

[1] Annexure FA4 pp56-59
[2] Annexure FA2 pp29-30

SAPS, Upington (‘’the second respondent’’) with a request to assist in the execution and enforcement of the orders. The applicant alleges that the second respondent refused to assist in executing and enforcing the Orders on the basis that the orders did not direct and authorize the second respondent and members of the SAPS Postmasburg to do so.

7 Notwithstanding the Orders, in October 2021 the respondents resumed the demonstrations and blockade of the road leading to the mine. The applicant, once again, approached the SAPS, Upington with the same Orders and requested the police to assist in stopping the demonstrations and blockade of the road leading to the mine. Members of the SAPS, Upington refused to intervene as they held the view that the Orders did not direct them to assist the applicant.

8 On 11 October 2021 the applicant brought yet another application to this Court under case number 2086/21, for an order *inter alia*:

8.1. That the respondents in that case (Boipelo Mojaki and 19 others) be ordered to refrain from blocking and/or obstructing the road giving access to portion 7 of the Farm Driehoekspan 435, District Hay, Northern Cape; remaining extent of the Farm Driehoekspan 435, District Hay, Northern Cape; and remainder of portion 2 of the Farm Kapstewel 436 situated in the district of Hay, Northern Cape (‘’the properties’’);

8.2. Interfering with the mining operations conducted by Afrimang on the aforesaid properties;

8.3. Harassing members of the applicant and employees of Afrimang;

8.4. Interdicting the respondents from interfering with the administration of the applicant;

8.5. Interdicting the respondents from instructing or affecting or causing any employee, staff member or official of the applicant to vacate their offices and/or leave any of the campuses of the applicant;

8.6. That prayers 8.1 to 8.5 above shall serve as interim interdict against the respondents until the return date;

8.7. That the order be served on the respondents by the Sheriff for the district of Postmasburg, Northern Cape, by reading out the order by loudhailer at the entrance or entrances of the properties, as well as affixing on a notice board elected on the properties for that purpose;

8.8. That members of the SAPS assist the Sheriff in serving and executing the order.[3]

9 The application served before the Honourable Acting Justice O'Brien on 11 October 2021, who issued a *rule nisi* calling upon the respondents to show cause, if any, on 5 November 2021 why the following order should not be made final:

9.1 That the respondents be ordered to refrain from:

9.1.1 Blocking and/or obstructing the road giving access to the properties;

[3]Annexure ''FA3'' pp31-33

9.1.2 Interfering with the mining operations conducted by Afrimang on the properties;

9.1.3 Harassing members of the applicant and employees of Afrimang.

9.2 That the respondents be interdicted from interfering with the administration of the applicant.

9.3 That the respondents be interdicted from instructing or affecting or causing any employee, staff member or official of the applicant to vacate their offices and/or to leave any of the campuses of the applicant.

9.4 That prayers 9.1 to 9.3 above shall serve as interim interdict against the respondents until the return date.

10 The Order further directed that the Order be served on the respondents in the following manner:

10.1. By the Sheriff for the district of Postmasburg Northern Cape by reading out the order by loudhailer at the entrance or entrances of the properties, as well as affixing on a notice board elected on the properties;

10.2. That the members of SAPS assist the Sheriff in serving and executing the order.

11 It is not in dispute that the *rule nisi* was duly served on the respondents by the Sheriff for the district of Postmasburg, in the manner directed in terms of the Order. What appear to be in dispute between the applicant and the first to third respondents (the police respondents) though, are:

9.1. whether after service of the Order on the respondents, the deponent to the applicant's founding affidavit (Boniface Masiane) approached members of the SAPS, Upington for assistance in executing and enforcing the Court order; and

9.2. whether Detective Reiter refused to offer such assistance on the basis that the Order was not final, but merely provisional.

12 As I shall demonstrate below, this dispute is illusory, more than real. I say so because in their answering affidavit, the respondents have located their dispute somewhere else.

12.1. The first defence advanced by the respondents is that in terms of the Order, the responsibility to serve and execute the Order rested on the Sheriff, and not the respondents;

12.2. Secondly, that in terms of the Court Order, it was only the Sheriff who could approach members of the SAPS for assistance in serving and executing the Court order, and not the applicant itself.[4] This,

[4]See for example, Respondents' answering affidavit p3 paras 5.2-5.5; p5 paras 10.1-10.4

notwithstanding the fact that the Court order was directed at stopping conduct of a criminal nature, which falls squarely within the constitutional mandate of the SAPS – to prevent, combat and investigate crime, to maintain public order, to protect and secure the inhabitants of the Republic and their property, and to uphold and enforce the law.[5]

13 It is a matter of grave concern that the respondents have decided to adopt such attitude when they are approached by members of the community for assistance in stopping criminal and/or disruptive conduct which brought the activities of the mine to a grinding halt. To insist that the applicant must first obtain a final order before the police can act, is in my view, illustrative of the respondents' lack of appreciation of their role under the Constitution. This is the type of conduct which the Court must never countenance.

14 More and more, we see civil society taking over and performing the functions that are in terms of the Constitution reserved for law-enforcement agencies, security agencies, the National Prosecuting Authority and other government agencies. Recently, we have seen and heard of Afriforum taking upon itself the role of guarding the Country's borders – a function which in terms of the Constitution, is reserved for the National Defence Force. We have also seen and heard of criminal cases which Afriforum has taken upon itself to prosecute – a function reserved for the National Prosecuting Authority. We have seen and heard about Operation Dudula, an organization that took on the fight against the influx of undocumented illegal immigrants and drug trafficking in our communities. The latest, is a case brought by Solidarity trade union against Eskom employees who

[5]S205(3) of the Constitution of the Republic of South Africa Act, 108 of 1996 ''*the Constitution*''

embarked on an unprotected strike. These are few of the examples where civil society has taken upon itself, the role of fighting crime, lawlessness and protecting our country's borders. In my observation, all these things are happening because society has lost confidence in the ability of our law enforcement agencies to perform their duties.

15 To come back to the facts of this case, the *rule nisi* was confirmed on 11 March 2022 and on the same day, the final Order was delivered to the SAPS, Postmasburg. It is alleged that Detective Mokgosi received the Order and promised to execute it the next day on Saturday the 12th of March 2022. Needless to say that despite the respondents' promise to execute the Order, the respondents once again, failed and/or refused to clear the road and allow mining activities in the properties to continue as *per* the Court Order.

16 On Monday, the 14th of March 2022 the deponent to the applicant's founding affidavit, the secretary of the applicant (Paulus Mphasi) and other members of the applicant went to the SAPS, Upington which is a cluster overlooking Postmasburg and other satellite police stations. They showed the final Court Order to the Cluster Commander (Colonel PC Coetzee ''*Coetzee*") and informed him that the SAPS Postmasburg had refused to execute the court order. Coetzee then contacted the Acting Station Commander of the SAPS, Postmasburg, and informed him to implement the Court Order. The Acting Station Commander, Postmasburg agreed and indicated that the applicant's representatives should report at the Postmasburg Police Station on Tuesday the 15th of March 2022.[6]

[6]FA p18 para 6.5

17 On Tuesday (15 March 2022) the deponent to the applicant's founding affidavit, the secretary of the applicant, as well as other members of the applicant descended to the Postmasburg Police Station as previously advised. On their arrival, Sergeant Qokolo of the SAPS, Postmasburg informed them that the applicant should allow the respondents in that matter to benefit from the land. In addition, Constable Louw of the SAPS, Postmasburg also informed members of the applicant that even if they registered hundred complaints, the SAPS will simply not act.[7] The applicant's members even registered a criminal complaint with the SAPS, Postmasburg.[8]

18 The next day (Wednesday the 16th of March 2022) the deponent to the applicant's founding affidavit, together with Mphafi went to the Postmasburg Police Station to request assistance once again from members of the SAPS in resolving the blockade of the road leading to the mine. They were informed by a member of the SAPS, Postmasburg (Mokgosi) that since the respondents had been blocking the road before 11 March 2022, the Court Order is no longer effective.

19 On Tuesday the 17th of March 2022 the deponent to the applicant's founding affidavit, together with another member of the applicant (Ndlovu), once again went to the Postmasburg Police Station to seek assistance from the police. They showed Mokgosi photos and a video of the respondents blocking the road with a truck. Still, the members of the SAPS, Postmasburg showed very little, if any, interest in assisting the members of the applicant to stop the respondents in that matter from blocking the road leading to the mine and generally acting in a manner that disrupted the activities of the Mine.

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[7] FA pp19-19 paras 6.6- 6.7
[8] Annexure ''FA5'' pp37-38

20 This forced the applicant on 23 March 2022 to launch yet another application on an urgent basis, seeking assistance from the Court as the SAPS has either refused or simply neglected to assist them in enforcing the orders of this Court, and to restore peace and stability at the mine as well as the community adjacent to the mine.

**The 23 March 2022 Urgent Application**

21 In the 23 March 2022 application, the applicant sought an order *inter alia,*

21.1 directing the respondents in that matter (being Minister of Police as the ‘’first respondent’’; Station Commander: South African Police Service, Postmasburg as the ‘’second respondent’’; and Station Commander: South African Police Service, Upington as the ‘’third respondent’’) to execute the orders granted by this Court under case numbers 1815/2019; and 2086/21 respectively; and directing the respondents to bear the costs of the application on attorney and client scale.

22 The application was opposed by all three respondents. They did so essentially on the following grounds:

22.1 First, the deponent to the founding affidavit did not bring the Court Order to the attention of the respondents and/or detective Reiter;[9]

[9]Answering affidavit p5 para 10.2

22.2 Second, in terms of the Court Order, the respondents could only assist the Sheriff in serving and executing the Court Order, but not take over the responsibility of the Sheriff.

23 The matter served before the Court on 25 March 2022. The applicant was represented by Mr Ramonyai on the instructions of Koikanyang Inc, whereas the respondents were represented by Mr Ramavhale of the office of the State Attorney (Kimberley).

24 After hearing argument from both sides, I made an order directing the second respondent to execute the orders granted by this Court under case numbers 1815/2019 and 2086/21. The second respondent was also directed to pay the costs of the application on attorney and client scale. This is the order that is the subject matter of the application for leave to appeal.

**The application for leave to appeal**

25 In the application for leave to appeal, the respondents have challenged the Order of this Court granted on 25 March 2022 on seven (7) grounds, and these are:

22.1. The Acting Judge erred when he stated that the Respondents had a duty to act in substitution of the Sheriff;

22.2. The Acting Judge erred when he found that the purposive interpretation was applicable in the interpretation of his court order which is subject of urgent application;

22.3. The Acting Judge erred when he found that the Respondents (*sic)* intention to assist the Sheriff was not sufficient to comply with the court order;

22.4. The Acting Judge erred when he did not consider the intention of the Respondents to comply with the directions of the court order;

22.5. The Acting Judge erred when he ordered the Respondents to pay the costs of the urgent application without considering the intentions of the Respondents;

22.6. The Acting Judge erred when he ordered the Respondents to pay the costs of the urgent application on a punitive scale as between attorney and client;

22.7. The Acting Judge erred when he directed the Applicant not to address him in the matter and stated in the order that he heard Mr Ramonyai for the Applicant.

26 Though the respondents did not formally abandon some of the grounds of appeal, only three of these grounds were seriously pursued by the respondents at the hearing of the application for leave to appeal. First, the duty to serve and execute court orders rests on the Sheriff, and not the respondents. Second, since the court orders were clear, they did not require any tools of interpretation to be brought into aid. Third, the cost order against the respondents was not just and equitable. I deal with each of these grounds in the discussion below. Before doing so, it is necessary to make a few remarks about the test for leave to appeal under

section 17 of the Superior Courts Act, 10 of 2013 (''*Superior Courts Act"*). This is particularly important because the respondents' grounds of appeal fall short of the standard set by section 17(1) of the Superior Courts Act.

**The test for leave to appeal**

27 The test for leave to appeal is trite – it is whether the appeal would have a reasonable prospect of success. This test was explained by the SCA in *Member of the Executive Council for Health, Eastern Cape v Kirland and Another.*[10]

> *'Once again it is necessary to say that leave to appeal, especially to this Court, must not be granted unless there truly is a reasonable prospect of success. Section 17(1)(a) of the Superior Courts Act 10 of 2013 makes it clear that leave to appeal may only be given when the judge concerned is of the opinion that the appeal would have a reasonable prospect of success; or there is some other compelling reasons why it should be heard. An applicant for leave for leave to appeal must convince the court on proper grounds that there is a reasonable prospect or realistic chance of success on appeal. A mere possibility of success, an arguable case or one that is not hopeless, is not enough. There must be a sound rational basis to conclude that there is a reasonable prospect of success on appeal.'*

[10][2016] JOL 36940 (SCA) at paras 16-17

28 Unlike under the previous test,[11] which was mainly concerned with whether there is a reasonable prospect of the appeal succeeding, the test for leave to appeal under section 17(1)(a) of the Superior Courts Act now requires a measure of certainty – that another court will differ with the court *a quo*.[12] Section 17(1) has therefore raised the bar higher than it has been under the repealed Supreme Court Act, 59 of 1959.

**Evaluation**

29 I have carefully considered the grounds of appeal set out above, as well as the heads of argument filed on behalf of the respondents. I have also considered the heads of argument filed on behalf of the applicant in the main application and in this application for leave to appeal. It is apparent from the respondents' heads of argument that the respondents have completely missed the import of the Order that is the subject-matter of the application for leave to appeal. The issue is not whether the SAPS has the primary responsibility of executing orders of court. That responsibility undoubtedly rests on the Sheriff by virtue of section 43 of the Superior Courts Act. I did not understand the applicant to be contending differently. The applicant too, seems to accept that under section 43 of the Superior Courts Act, the responsibility to execute court orders rested on the Sheriff.

30 The central question in this case, however, is whether once an order of court has been served by the Sheriff, members of the community can approach the SAPS

[11]See for example, Westinghouse Brake & Equipment (Pty) Ltd v Bilger Engineering (Pty)Ltd 1986 (2) SA 55 (A) at 560I

[12]See for example, Mont Chevraux Trust v T Goosen and 18 others Case T28/2012

for assistance in enforcing the terms of the court order without first enlisting the services of the Sheriff to once again, try to enforce the court order.

31 The respondents contend that the wording of paragraph 3.2 of the Order and section 43(1) of the Superior Courts Act, precluded the applicant from directly approaching the SAPS for assistance to enforce the Court Order. The applicant, so the argument continues, ought to have first enlisted the services of the Sheriff to execute the Court Order, and it is only if the Sheriff has a problem or is in any way hindered or obstructed from executing the Court Order, that the Sheriff would be entitled to request the assistance of the SAPS. In support of this argument, the respondents rely on an unreported judgment of the North West High Court, Mahikeng in *Harold Msiza v Dikeledi Msiza* and another, case number M271/15. In particular, the respondents rely on paragraphs [13] and [14] of the judgment, as authority for the proposition that the applicant was not entitled to directly approach the SAPS for assistance. In that case – *Harod Msiza*, the Court said the following:

31.1. *The primary responsibility for the execution of court orders is that of the Sheriff of the High Court concerned. Section 43(1) of the Superior Courts Act 10 of 2013 provides that the sheriff must, subject to the applicable rules, execute all sentences, judgments, writs, summonses, rules, orders, warrants, commands, and processes of any Superior Court directed to the sheriff.*[13]

[13] Para [13]

31.2. *The applicant was obliged to enlist the services of the sheriff. My order directing the police to assist the sheriff should he request assistance was specifically made because it is not the responsibility of the South African Police Service to execute civil orders of the High Court.*[14]

32 The decision in *Harold Msiza* (*supra*) is distinguishable from this case. In *Harold Msiza*, immediately after the order was granted by the court, the applicant and his legal team went straight to the police station at Rustenburg and handed the court order to the police for execution. That is different from the facts of this case. In this case, the first order (*rule nisi*) was served on the respondents by the Sheriff. It was only when despite service, the respondents persisted with their conduct of blocking the road leading to the mine, that the applicant approached the SAPS for assistance. Secondly, in *Harold Msiza* there was no criminal and/or disorderly conduct involved. In that case, the SAPS was merely requested to serve the court order on the respondent. That is different from this case. In this case, the respondents were engaged in criminal and/or disorderly conduct (harassment, blocking the road and hi-jack). The SAPS was being requested to stop the blockade, harassment, and hi-jacking (the subject of the Court Order). In essence, therefore, what the SAPS was being requested to do, was to prevent crime and maintain public order. The facts of this case are clearly distinguishable from the facts in *Harold Msiza*. Once it is so, then it follows that *Harold Msiza (supra)* is not authority for the proposition that members of the SAPS are entitled to refuse assistance to members of the community when criminal and/or disorderly conduct is being committed, simply because the Court Order says that the '*SAPS shall assist the Sheriff*' in serving and executing the order.

[14]Para [14]

33 In my view, a distinction must be drawn between mere service of a judgment or order where criminal and/or disorderly conduct is not involved on the one hand, and execution of a court order or judgment which seeks to prevent criminal and/or disorderly conduct, on the other. *Harold Msiza* is concerned with the former scenario. That is different from the latter scenario where criminal and/or disorderly conduct are committed, and the Court Order is intended to stop such conduct. In the latter scenario, members of the SAPS cannot hide behind the wording of the Court Order to refuse assistance to members of the community when their assistance is requested. That would be a classic case of abdication of the police's constitutional responsibilities.

34 Crime prevention, and maintenance of public order are some of the core functions of the SAPS. In this regard, section 205(3) of the Constitution of the Republic of South Africa Act, 108 of 1996 (''the *Constitution*'') provides that the objects of the police are to prevent, combat and investigate crime, to maintain public order, to protect and secure the inhabitants of the Republic and their property, and to uphold and enforce the law.

35 Whenever acts of criminality are committed, society is entitled to look up to the SAPS for assistance, and the police have a corresponding duty to step up and help. That is really what the applicant was seeking from the SAPS – assistance from the SAPS in stopping the various acts of criminality and/or disorderly conduct that were being committed by the respondents, and protection from the SAPS. With or without a court order, the applicant was entitled to approach the police for assistance whenever criminal and/or disorderly conduct was being

committed against them. In fact, the police did not require a court order to remind them of their responsibilities. Whenever crime is reported or brought to the attention of the police, they are obliged to act.

36 The respondents cannot hide behind the wording of the Court Order as a basis for abdicating their constitutional obligations. As an organ of State, they too must respect, protect and uphold the Constitution. That is what section 7(2) of the Constitution requires.

37 In fact, it is unheard of that members of the police can refuse to act when conduct of a criminal nature is brought to their attention simply because the Court Order says the '*SAPS shall assist the Sheriff in serving and executing the orders'*. To do so, would clearly be to excessively peer at the language of the document without paying sufficient attention to the context and purpose of the document – the Court Order. That is precisely what the Court tried to warn the respondents about, when it called upon the respondents to rather consider the purpose of the Court Order. Clearly, that too, the respondents did not seem to appreciate. Hence their persistence in challenging the Order on the ground *inter alia*, that the Court erred by adopting a 'purposive interpretation' of the Court Order, when the court order was clear in its terms. Only two points need to be made in this regard.

37.1. First, it is mind-boggling for the respondents to contend as they do, that it was not necessary for the Court to go into a process of interpretation of the Court Order because the order was clear in its terms. The fact that the parties were not *ad idem* about the meaning of paragraph 3.2 of the Order means that the Court had to go into a process of determining the true

meaning of that paragraph. That is the very purpose of interpretation of documents.

37.2. Second, a court order like any other written instrument often requires interpretation to ascertain the true meaning of the document. This was made clear by the SCA in *Natal Joint Municipal Pension Fund v Endumeni Municipality 2012 (4) SA 593 (SCA).*

> ‘’*Interpretation is the process of attributing meaning to the words used in a document, be it a legislation, some other statutory instrument, or contract, having regard to the context provided by reading the particular provision or provisions in the light of the document as a whole and the circumstances attendant upon its coming into its existence. Whatever the nature of the document, consideration must be given to the language used in the light of the ordinary rules of grammar and syntax; context in which the provision appears; the apparent purpose to which it is directed and the material known to those responsible for its production. Where more than one meaning is possible each possibility must be weighed in the light of all these factors. The process is objective not subjective. A sensible meaning is to be preferred to one that leads to insensible or unbusinesslike results or undermines the apparent purpose of the document… The inevitable point of departure is the language of the provision itself, read in context and having regard to the purpose of the provision and the background to the preparation and production of the document.”*

37.3. Once it is so, then it is fallacious for the respondents to contend as they do, that because paragraph 3.2 of the Order is clear, then there was no need for the Court to go into a process of interpretation.

38 In a throw-away argument the respondents contend that since paragraph 3.2 of the Court Order envisaged that the Sheriff must first execute the Order before requesting the assistance of members of the SAPS, then it was only the Sheriff who should have requested assistance from members of the SAPS, not members of the applicant.

39 Paragraph 3.2 of the Order of 11 March 2022 reads as follows:

> ‘’*That the members of SAPS assist the Sheriff in serving and executing the order as aforementioned.”*

40 The respondents’ construction of paragraph 3.2 of the Order is flawed precisely because,

38.1. There is nothing in paragraph 3.2 that requires the Sheriff to first serve and/or execute the order before requesting assistance from members of the SAPS. There is no reason why the Sheriff cannot request assistance from the police even before serving the order.

38.2. In any event, the respondents’ construction moves from the premise that the Order was never served by the Sheriff before the SAPS was approached for assistance; and

38.3. That even after execution of a court order, the Sheriff will always be available to see to it that the terms of the order are carried out, and that if they are disobeyed then the Sheriff must be available to request assistance from the SAPS to enforce the terms of the order.

39. All three premises are demonstrably false.

39.1. I have already demonstrated above that the order (*rule nisi*) was served by the Sheriff on the respondents. The duty of the Sheriff is to serve/execute a court order. Once he/she has served/executed the order, then he/she has discharged his/her mandate in terms of the court order. The Sheriff is not required thereafter, to forever be available to see to it that the Order is complied with.

39.2. As the applicant's counsel has correctly pointed out in his heads of argument, it is not practical that each time members of the community engage in conduct that is prohibited in the court order, the applicant must first enlist the services of a Sheriff who will in turn, then report the incident to the police. This is insensible. It defeats the purpose of the Order especially one that has been granted on an urgent basis. There is absolutely no reason why in such event, the applicant cannot directly report the incident to the police and request their assistance in preventing the conduct complained of especially if such conduct amounts to criminal and/or disorderly conduct.

39.3. I have already explained above that the police have a constitutional obligation to prevent, combat, and investigate crime, to maintain public order, to protect and secure the inhabitants of the Republic and their property and to uphold the law. I find it difficult to understand why the police would even require a court order to direct them to perform their constitutional obligations.

40. If paragraph 3.2 of the Order was to be accorded the interpretation contended for by the respondents, that would lead to insensible results. On the contrary, the interpretation contended for by the applicant would achieve the purpose of the Order – to prevent illegal/unlawful and/or disorderly conduct in the community and the road leading to the mine. In any event, it is plain from their heads of argument that in their interpretation of the Order the respondents focused solely on the language of paragraph 3.2 of the Order without paying sufficient attention to the purpose of the Order. This method of interpretation has been deprecated in several judgments of our courts as an incorrect method of interpretation.

41. In the result, I reject the interpretation of the Order contended for by the respondents. I find such interpretation to be insensible and inconsistent with the purpose of the Court Order. Properly construed, there is nothing in the Order that requires the applicant to first engage the Sheriff before requesting the assistance of the police to prevent an illegal/unlawful and/or criminal conduct. Beyond service of the order on the respondents, there was nothing further that

the Sheriff could do to ensure compliance with the Order. It was only the police who could bring the situation under control.

42. Regarding costs, it is trite that costs on a punitive scale are within the discretion of the Court and are awarded in exceptional circumstances. That would include a situation where the circumstances of the case are such that they required a court to mark its displeasure with an appropriate costs order. Punitive costs are also awarded to ensure that the successful party is not out of pocket because of the litigation.

43. In this case, the applicant incurred costs in obtaining various court orders to prevent the respondents from continuing with the various criminal and/or disorderly conduct. This notwithstanding, the applicant was once again forced to approach the Court to compel the respondents (the police) to perform their constitutional obligations and protect the applicant against the alleged criminal and/or disorderly conduct. Instead of realizing their ‘mistake’ and apologized for giving the applicant a run around, the respondents persisted with their nonchalant attitude.

43.1. They opposed the application on spurious and at times, contradictory grounds. For instance, at one point they advanced the argument that it is only the Sheriff who could request their assistance, but not members of the applicant. At another point, however, the respondents argued that the applicant did not request the assistance of the police. Then at another point the respondents argued that they offered their assistance to the applicant.

43.2. They persisted with the same spurious grounds to apply for leave to appeal.

43.3. Most significantly though, the respondents refused to perform their constitutional obligations at a time when their assistance was most needed. It is conduct like this that results in society losing confidence in the ability of the SAPS to protect them from criminal conduct. Hence, society ends up taking the law into its own hands.

44. This type of conduct on the part of the police cannot be countenanced by the Court. In fact, it is conduct which must never be tolerated. The police have a constitutional mandate to prevent, combat and investigate crime, to maintain public order, to protect and secure the inhabitants of the Republic and their property and to uphold the law. The police have failed the applicant in this case. Since the police are not prepared to right their wrongs and instill the public confidence in the ability of the SAPS to perform its functions, it is up to this Court to ensure that conduct of this nature does not happen again. It is for this reasons that the Court ordered the respondents to pay the costs of the application on attorney and client scale as a way of marking its displeasure about the conduct of the SAPS. Hopefully, the costs order will be a constant reminder on the police of their constitutional obligations. It seems that some members of the police have completely forgotten why they are wearing police uniform. It would also have been unfair to expect the applicant to be out of pocket because of litigation which is senseless. This matter should not have reached this point.

45. In my view, what happened in this case must be reported to the Minister of Police for possible investigation into the conduct of the various police officers mentioned in the body of this judgment. Hopefully, the Minister of Police will ensure that this does not happen again.

**Conclusion**

46. For all these reasons, I find that the respondents have failed to meet the heightened test for leave to appeal. In the result, the application for leave to appeal must be dismissed with costs.

**Order**

47. In the result, I make the following order:

1. The application for leave to appeal is dismissed.
2. The respondents are to pay the costs of the applicant, jointly and severally the one paying the other to be absolved.

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M J Ramaepadi

Acting Judge of the High Court of South Africa, Northern Cape Division, Kimberley

**APPEARANCES**

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|---|---|
| For the Respondents: | Ramavhale FD |
| Instructed by: | State Attorney, Kimberley |
| | |
| For the Applicant: | Ramonyai ME |
| Instructed by: | Koikanyang Inc c/o Magoma Attorneys, Kimberley |