



**IN THE HIGH COURT OF SOUTH AFRICA  
(GAUTENG DIVISION, JOHANNESBURG)**

- (1) REPORTABLE: No  
(2) OF INTEREST TO OTHER JUDGES: No  
(3) REVISED.

SIGNATURE

DATE: 5 April 2024

Case No. 2024-018005

In the *ex parte* application of –

**INVESTEC BANK LIMITED**

*in re:* the matter between:

**INVESTEC BANK LIMITED**

Applicant

and

**PRITHIE PILLAY**

First Respondent

**ANCHOR TECHNICAL TAPES CC**

Second Respondent

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**JUDGMENT**

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**WILSON J:**

- 1 On 21 February 2024, the applicant, Investec, approached my brother Cassim AJ *ex parte* and without notice to the respondents. Investec asked for an order permitting the sheriff to seek out, seize and preserve a range of confidential documents said to be in the respondents' possession. Investec

also sought an order interdicting and restraining the respondents, together with “their affiliates and/or related persons” from “using, distributing, copying [or] publishing” the information pending the outcome of an application for final relief on the same terms. The first respondent, Ms. Pillay, is a former employee of Investec. The second respondent, Anchor, is a close corporation of which Ms. Pillay’s husband is the sole member.

2 Cassim AJ granted the order as prayed for, and it was executed shortly thereafter. The respondents, on becoming aware of the order when it was executed against them, then enrolled the matter for reconsideration in my urgent court on 13 March 2024. On 15 March 2024, I set aside Cassim AJ’s order and replaced it with an order, the details of which were agreed between the parties, that preserved the information seized at the sheriff’s office, granted Ms. Pillay’s counsel access to that information to the extent necessary to draft a statement of claim shortly to be issued in the Labour Court, and contained various other directions meant to preserve the confidentiality of the information. The order I made will operate pending the outcome of Investec’s application for final relief. I ordered Investec to pay the respondents’ costs on the attorney and client scale.

3 I indicated at the time I gave the order that my reasons would follow in due course. These are my reasons.

4 Investec retained Ms. Pillay for several years as an in-house lawyer. Her employment was terminated, after a disciplinary hearing, on 31 January 2024. Before she left Investec, Ms. Pillay preserved and removed a large number of Investec’s documents. She did so by emailing 199 of the

documents from her Investec account to her private email address. She also printed-out around 120 documents. The email address to which the documents were transmitted bore Anchor's domain name. The emailed documents accordingly passed through, or were stored on, servers owned or used by Anchor for its own purposes.

5 Investec says that the documents contain highly sensitive and confidential information about its clients, but it was accepted before me that the documents are not exclusively of that nature. A cursory examination of the annexures to Investec's founding affidavit in which the documents are identified reveals that three of the documents had the title "Detox Diet". One was a notice of a Discovery Insure Annual General Meeting. Another appears to be a direct marketing e-mail with the subject line "Save on your first trip of the year". While I have no reason to doubt that Investec sought to recover sensitive, confidential information – access to which it had a right to restrict – Investec cast a far broader net than that.

6 Ms. Pillay says that most of the documents in her possession were used at her disciplinary hearing, and she intends to use them again to challenge her dismissal before the Labour Court. It is not necessary for me to set out her defence, or the basis on which Ms. Pillay now seeks to challenge her dismissal as unfair, in any detail. It is sufficient to say that Ms. Pillay claims that she was dismissed in contravention of the Protected Disclosures Act 26 of 2000. If she is correct, then her dismissal was automatically unfair under section 187 (1) (h) of the Labour Relations Act 66 of 1995.

7 Investec knew well before it approached Cassim AJ that Ms. Pillay had the documents, and that most of them had been emailed to her personal email account. Investec was attempting to negotiate with Ms. Pillay for their return. Those talks were part of a broader set of negotiations aimed at settling Ms. Pillay's unfair dismissal claim. Investec freely admits at paragraph 91 of its founding affidavit that there was, throughout those negotiations "an understanding between the parties' attorneys of record to bring any proceedings regarding the documents on notice to [Ms. Pillay]" (my emphasis).

8 Mr. South, who appeared with Ms. Maharaj-Pillay for Investec before me, quite properly accepted that there was no reason to doubt, for the bulk of the parties' settlement discussions, that Ms. Pillay intended to use only those documents relevant to her claim, and only for the purposes of pursuing her unfair dismissal claim. What triggered Investec's approach, Mr. South submitted, was the discovery that the personal email address to which Ms. Pillay had transmitted the documents was in fact held on Anchor's server. Mr. South submitted that this discovery created the reasonable fear that Ms. Pillay was about to disseminate the documents further, and that the only way to stop her was an *ex parte* approach to this court for an order to seize and preserve the documents.

9 This court has often been required to reiterate the very high bar an applicant must meet if they wish to secure relief which affects another person's rights without giving that person notice (for two recent examples see *Mazetti Management Services (Pty) Ltd v Amabhungane Centre for Investigative*

*Journalism NPC* 2023 (6) SA 578 (GJ) (“*Mazetti*”) and *Le Grellier v Kamionsky* (2023-058876) [2023] ZAGPJHC 1286 (13 November 2023) (“*Le Grellier*”). The power to grant relief *ex parte* “should be exercised with great caution and only in exceptional circumstances” (*Recycling and Economic Development Initiative of South Africa NPC v Minister of Environmental Affairs* 2019 (3) SA 251 (SCA), paragraph 80 (“*Recycling Initiative*”). Those who seek *ex parte* relief must show that giving notice of their application to the person against whom they seek relief would defeat the purpose of that relief, and that without the relief being granted *ex parte*, the applicant would suffer irreparable harm (see *Shoba, Officer Commanding Temporary Police Camp, Wagendrift Dam* 1995 (4) SA 1 (A), p 15H-I; *South African Airways SOC v BDFM Publishers* 2016 (2) SA 561 (GJ), paragraph 22 “*SAA*”); and *Mazetti*, paragraph 1). The requirement to give notice to all parties interested in the relief sought is otherwise “sacrosanct” (*SAA*, paragraph 22).

- 10 In this case, Investec’s reasons for approaching Cassim AJ *ex parte* were woefully inadequate. It already knew that Ms. Pillay had the documents. It must have known why she claimed the right to use them. There was no indication on the papers that she intended to use them for any other purpose injurious to Investec’s interests, or those of its clients. The very fact that Investec was negotiating for their return, and that there was an “understanding” that an application for their return would be brought on notice, ought, in the absence of some dramatic new development that demonstrated Ms. Pillay’s bad faith, to have excluded the possibility of relief being sought or granted *ex parte*. The mere fact that her email account was

housed on a server owned and controlled by someone else could not have been the new development that Investec claimed it was. Virtually everyone's email account is housed on a server provided by someone else. In this case, Ms. Pillay's email account was housed on her husband's company's server. That might reasonably have been thought to make the documents less vulnerable to further transmission than if they were housed on a server controlled by an unconnected third party.

11 None of this means that Investec ought not to have been concerned about the security of at least some of the documents, or that it ought not to have approached this court urgently to take steps to secure them. It means only that there was no basis for Investec to have done so *ex parte*, because there was no case made out at all that giving notice would defeat the purpose of the relief, or that Investec or its clients would suffer irreparable harm if notice was given. That might have been established had Investec asked for, and been refused, an undertaking that the documents would not be disseminated or used pending an application for interdictory relief brought urgently and on notice. But that did not happen. The understanding between the parties' attorneys that notice would be given in fact shows that Investec knew it had no genuine reason to fear that Ms. Pillay would disseminate the documents if she was informed of an urgent approach to this court.

12 Ordinarily, sound judicial policy requires that a party who has obtained relief *ex parte* when they should have given notice ought to forfeit that relief. That is also generally the approach in cases where an applicant for *ex parte* relief is later found not to have disclosed a fact material to the relief sought. In

those cases, a court is justified in setting aside a wrongly granted *ex parte* order “unless there are very cogent practical reasons why an order should not be rescinded” (see *Schlesinger v Schlesinger* 1979 (3) SA 521 (W) at 348E–349B and 350B, and *Recycling Initiative* paragraphs 45 to 52). The cost to the administration of justice in preserving an order wrongly granted *ex parte* will in many cases be too high. That cost lies in encouraging a proliferation of inappropriate *ex parte* approaches in the hope or expectation that the relief granted *ex parte* will not later be reconsidered, or, if it is, that it will be preserved at least in part (see *Le Grellier*, paragraph 45).

13 Nonetheless, I think that this case is an exception to the general rule. There are, in other words, “very cogent practical reasons” why Cassim AJ’s order should not be completely undone. There was no dispute between the parties that the information seized and preserved under Cassim AJ’s order included information of a confidential nature concerning Investec’s clients, access to which ought properly to be restricted. That information is also probably irrelevant to the Labour Court claim Ms. Pillay intends to pursue. While there is no foundation laid on the papers for the suggestion that Ms. Pillay would maliciously disclose that information to third parties, I accept that Investec is justified in seeking to restrict access to that information insofar as the restriction does not impede the preparation of Ms. Pillay’s Labour Court claim. The order I granted manages the documents to that end.

14 I cannot say at this stage whether Ms. Pillay has a clear right to possess and use those of the documents that are relevant to her Labour Court claim. But the claim she intends to bring in the Labour Court is not obviously frivolous.

While Investec does not accept that Ms. Pillay has been dismissed unfairly, it has not sought to suggest that her grievances are vexatious. Nor does it deny that at least some of the documents are relevant to her claim. It seems to me that, in those circumstances, allowing Ms. Pillay's counsel access to the documents for the purposes of preparing a Labour Court claim which is to be filed under seal of confidentiality strikes the appropriate balance between the parties' interests. It also has appropriate regard to the interests of Investec's clients, which, though those clients are not before me, I have weighed in my decision-making.

15 Investec must bear the costs of the reconsideration application on the attorney and client scale because, as it ought to have known, there was no justification for approaching Cassim AJ without notice to the respondents.

16 It was for these reasons that I made my order of 15 March 2024.

**S D J WILSON**  
Judge of the High Court

This judgment is handed down electronically by circulation to the parties or their legal representatives by email, by uploading to Caselines, and by publication of the judgment to the South African Legal Information Institute. The date for hand-down is deemed to be 5 April 2024.

HEARD ON: 13 and 15 March 2024

DECIDED ON: 5 April 2024

For the Applicant: A South SC  
P Maharaj-Pillay  
Instructed by Edward Nathan Sonnenbergs Inc

For the Respondents: S Swartz  
Instructed by Crawford and Associates Inc