IN THE HIGH COURT OF SOUTH AFRICA
(WESTERN CAPE DIVISION, CAPE TOWN)

REPORTABLE

CASE NUMBER: 3424/2024

In the matter between

PETREFUEL (PTY) LTD

APPLICANT

Formerly Quest Petroleum (Pty) Ltd

Registration Number 2013/056996/07

and

TARSICA INVESTMENTS NO 7 CC

FIRST RESPONDENT

(Registration number 2002/043557/23)

PANDELIS STERIANOS

SECOND RESPONDENT

CONSTANTINOS PSOMAS

THIRD RESPONDENT

SHERIFF OF THE HIGH COURT, MALMESBURY

FOURTH RESPONDENT

JUDGMENT

Date of hearing: 8 November 2024

Date of judgment: 11 November 2024

BHOOPCHAND AJ:

1. The Applicant, a fuel wholesaler, previously known as Quest Petroleum, seeks a declaration that the First to Third Respondents are in contempt of the order of this Court issued on 28 February 2024 ("the original order"). The original order emanates from an application to vindicate the Applicant's four petrol pumps, three underground tanks ('the equipment") and branding material from a petrol station in Avondale, Atlantis, Cape West Coast, owned by the First Respondent ("Tarsica"). The Applicant supplied petroleum products exclusively to Tarsica under a retail fuel supply agreement ("RSA") concluded on 1 March 2018. It was common cause that the Applicant owned the equipment.

2. The Second and Third Respondents, Pandelis Sterianos ("Sterianos") and Constantinos Psomas ("Psomas") are brothers. They manage the petrol station. The brothers obtained their fuel from an alternate supplier for an undefined period, culminating in the cancellation of the RSA at the beginning of 2024. They continued to use the Applicant's branding and equipment. The First to Third Respondents shall be referred to collectively as Tarsica unless the context requires each to be named. The Fourth Respondent is the Sheriff of the High Court, Malmesbury, against whom the Applicant seeks no redress. In addition to the declaration of contempt, the Applicant seeks a wholly suspended imposition of a fine against Tarsica and 30 days of incarceration for Sterianos and Psomas.

3. The original order enabled the Applicant to access the petrol station's premises and remove its branding and equipment. The Applicant has since removed its petrol pumps and branding material. This application pertains to the three underground tanks. The presence and removal of the tanks are controlled by statute. The owner, in this instance, the Applicant, bears the risk for any leaks and spillage of fuel into the ground. Removing the tanks is an expensive process. Municipal and provincial approval has to be obtained, and a controlled process has to be followed.

4. Tarsica sought leave to appeal the original order to this court and the Supreme Court of Appeal without success. An appeal to the Constitutional Court is pending.[1] In the interim, Tarsica invited the Applicant to remove the tanks, subject to advanced notification and a rollout programme. With the assistance of the Sheriff, the Applicant had placed locks on the entry hatches to the underground tanks only to find that Tarsica removed them. Tarsica continues using the tanks.

INTERPRETATION OF THE ORDER

5. The original order was followed by the written reasons provided on 22 March 2024 (“the original judgment”). The core issue in this application arises from the meaning attached to the phrase “secure and/or remove” as it is used in paragraph 3 of the original order:

> “Following the expiry of a period of thirty calendar days from the date of this order, the Applicant is entitled to **secure and/or remove** all of its equipment at the premises, and the First

[1] The Applicant alleges that the leave is defective as it is out of time

Respondent must afford the Applicant reasonable access to the premises in order to do so."

6. The Applicant relies upon a disjunctive interpretation, whereas Tarsica contends for a conjunctive one. Interpretation begins from the outset. The proper approach to interpretation is to read the words used in the context of the document as a whole and in light of all relevant circumstances attendant upon its coming into existence.[2] The court in *Endumeni* explained that this is how people use and understand language. The court gave the example of a nanny holding a baby over a tub of water who is asked to "drop everything and come running". The nanny would know that the instruction was not meant to apply literally to the circumstances.[3] Whatever the nature of the document, consideration must be given to the ordinary rules of grammar and syntax, the context in which the provision (the phrase in the circumstances of this case) 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 has to be weighed against all these factors. The process is objective, not subjective. A sensible meaning is preferred to one that leads to insensible or unbusinesslike results or undermines the apparent purpose of the document.[4] Construction is a unitary exercise.[5]

7. The principles of interpretation in *Endumeni* apply equally to the interpretation of judgments and orders.[6] In interpreting a judgment or order, the court's intention should be ascertained primarily from

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2 Natal Joint Municipal Pension Fund v Endumeni Municipality (920/2010) [2012] ZASCA 13; [2012] 2 All SA 262 (SCA); 2012 (4) SA 593 (SCA) (16 March 2012) at para 24

3 Endumeni at footnote 34

4 Endumeni at para 18

5 Endumeni at para 19

6 HLB International (South Africa) v MWRK Accountants and Consultants (113/2021) [2022] ZASCA 52; 2022 (5) SA 373 (SCA) (12 April 2022)

the language of the judgment or order. As in the case of interpreting a document, the judgment or order and the court's reasons for giving it must be read as a whole to ascertain its intention.[7] The intention of the Judge giving the order has to be established from the judgment itself. It serves no purpose to second guess the thinking of the Judge when he made the order. The starting point is to determine the manifest purpose of the order.

8. It is necessary to place the order in proper perspective and to consider the context in which it was made.[8] There is no essential difference between an 'order' and a 'judgment'. In some cases, an 'order' refers to a decision given upon relief claimed in an application on notice of motion, petition or other machinery recognised in practice. In contrast, a 'judgment' refers to a decision given upon relief claimed in an action. When used in the general sense, the word' judgment' comprises both the reasons for the judgment and the judgment or order.[9]

9. The manifest purpose of the judgment is to be determined by considering the relevant background facts that culminated in its being made.[10] A fairly recent illustration of the linguistic, contextual and purposive approach to the interpretation of a judgment or order is to be found in *Elan Boulevard (Pty) Ltd v Fnyn Investments (Pty) Ltd,* in which it was said that '[a]n order is merely the executive part

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7 HLB at para 26

8 Finishing Touch 163 (Pty) Ltd v BHP Billiton Energy Coal South Africa Ltd and Others [2012] ZASCA 49; 2013 (2) SA 204 (SCA) para 14; Van Rensburg and Another NNO v Naidoo and Others NNO; Naidoo and Others NNO v Van Rensburg NO and Others [2010] 4 All SA 398 (SCA); 2011 (4) SA 149 (SCA) para 43 et seq, HLB supra at para

9 Administrator, Cape and Another v Ntshwaqela and Others 1990 (1) SA 705 (AD) at 715B-F

10 Cross-Border Road Transport Agency para 22, see also Speaker, National Assembly and Another v Land Access Movement of South Africa and Others [2019] ZACC 10 (CC); 2019 (6) SA 568 (CC) para 43, HLB at para 27

of the judgment and, to interpret it, it is necessary to read the order in the context of the judgment as a whole'.[11]

10. The verb "secure" means to fix or attach something firmly so that it cannot be moved or lost. An alternate meaning is to succeed or obtain something, especially when it is difficult. The meaning of "remove" is to take something away or off from the position occupied. Both words can have other meanings, emphasising the importance of context when seeking the definition of words. The definitions of these words were unashamedly sourced from Google's Oxford Languages Dictionary in line with the exhortation to attach the ordinary meaning to words. "And" and "or" serve as conjunctions in a sentence. The word "and" in a sentence combines things or elements, connects ideas, or adds emphasis. The word "or" presents alternatives, indicates uncertainty or introduces consequences.

11. The Applicant introduced "to secure and/or remove" in paragraph 2.1 of its notice of motion to the original application. The Applicant sought immediate access to the petrol station to secure and/or remove all of the Applicant's branding and equipment within the meaning of the RSA. In paragraph 2.2 of the relief sought, the Applicant asked, on no less than 48 hours' notice after that, further access to the premises to **remove** any of the branding and equipment that the Applicant could not remove the first time around.[12] The Applicant's intention, as evinced in the notice of motion, was to remove the equipment within a specified period.

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[11] Elan Boulevard (Pty) Ltd v Fnyn Investments (Pty) Ltd [2018] SCA 165; 2019 (3) SA 441 (SCA) at para 28

[12] Para 9 of the judgment

12. In evaluating the merits of the relief sought by the Applicant, the Honourable Saldanha J stated that he was "more than satisfied that the Applicant established its right to **remove** its branding and equipment as a result of the termination of the RSA" and so too based on the common law. The relief granted by the court was made on that premise, i.e., that the Applicant would remove its equipment.[13]

13. The judgment considered Counsel's submission that the tanks could only be removed once permission and clearance were obtained from the municipality and provincial government to ensure that it was done safely and there was no environmental contamination. Applicant's Counsel asked that Tarsica be given 30 days to obtain alternate equipment and permission for its use. The 30 days were also intended for the Applicant to obtain the statutory clearance for the lawful extraction of the tanks from the ground. The Court requested the parties to agree to a schedule for the safe and lawful **removal** of the equipment. The parties were unable to broker a mutually acceptable arrangement. Tarsica's Counsel contended that in the absence of agreement, the relief had to be equitable, i.e., both parties' interests had to be considered. It was left to the Court to craft the final equitable order, which incorporated part of the relief sought in the Applicant's notice of motion, including the impugned phrase. The Court was "particularly mindful" of giving Tarsica time to source its equipment as it used the tanks to store fuel from its alternate source. The Court added paragraph 5 to the order to ensure the Applicant could access the tanks and monitor their safe usage. [14]

14. On reading the judgment as a whole, it is clear that the relief sought in the notice of motion was directed at securing **and** removing the

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[13] Paras 83 and 84 of the judgment

[14] Para 84 of the judgment under the heading: "The Relief"

tanks. It is also apparent from the judgment that the relief was directed at removing the tanks. Removing the tanks required reciprocal obligations, i.e., the procurement of alternative equipment by Tarsica and the Applicant obtaining the necessary permissions. The judgment envisaged a situation where the tanks would be removed after a mutually agreed plan was in place. The plan could only be effected once the statutory clearances were obtained.

THE CONTENTIONS OF THE PARTIES

15. The Applicant identified three meanings of the phrase “to secure and/or remove”: i.e., to secure, to remove, and to secure and remove. The applicant contended that the 30 days prescribed in the original order had expired, and Tarsica prevented the Applicant from securing its tanks. Tarsica had also impeded the Sheriff from rendering the Applicant assistance under paragraph 4 of the order. The Applicant contended that Tarsica had acted in contempt of the order since 19 August 2024, when it had learnt that the Supreme Court of Appeal had refused to grant Tarsica leave to appeal the original judgment.

16. In its answer to the founding affidavit, Tarsica protested the Applicant’s intention to secure the tanks and not to remove them. Tarsica contended that the Applicants had breached the tenor of the original order. The meaning that Tarsica attached to paragraph 3 of the order accords with this Court’s interpretation. Tarsica repeatedly invited the Applicant to remove its equipment whilst it sought leave to appeal the original judgment. On 29 February 2024, Tarsica communicated that notwithstanding its application for leave to appeal the original judgment, it wished to proceed with steps to

remove and replace the Applicant's tanks with those to be supplied by its new franchisor. Tarsica stated further that the costs for the safe removal of the tanks were for the Applicant's account. Tarsica estimated the costs of removing the tanks to be over R200 000, which is much more than their value. Tarsica stated that it awaited the Applicant to supply it, without delay, the proposed rollout. Tarsica offered to rent or purchase the tanks as an alternative. The Court is cognisant of the Applicant's unsuccessful attempts after 14 August 2024 to lock the hatches to the tanks and Tarsica's subsequent removal of the locks. Tarsica contended that the original order had not envisaged the situation that eventuated. It is difficult to disagree with the position adopted by Tarsica.

17. The papers are silent on whether the Applicant had sought the statutory clearance to remove the tanks safely. The Court can assume that the Applicant did not obtain them, nor did it provide Tarsica with a proposed plan to extract the tanks. Tarsica contended that the Applicant sought to collude with the landowner to cancel the lease of their premises. The Applicant intended to keep the equipment in place. In its reply, the Applicant stated that the original order entitled it to secure and/or remove its equipment. Nothing about its terms obliged the Applicant to remove the tanks. The Applicant persisted in its contention that using the words "entitled" and "secure and/or remove" gave it a choice. After the expiry of 30 calendar days, the Applicant was entitled to either secure and remove its tanks or secure them.

18. The Applicant declared, for the first time in its reply, that it intended to take possession of its equipment, and its preference was to retain it in position and not remove it. This preference arose when Tarsica's landlord informed Tarsica that it intended to end Tarsica's lease of the premises. The Applicant indicated that it wished to await the

termination of the lease before deciding on the fate of the tanks. The Applicant denied that its actions aimed to lock Tarsica out of its business. The Applicant had raised Tarsica's dispute with its landlord in the original application. The landlord had cancelled the lease agreement and demanded that Tarsica vacate the premises by 29 February 2024, nine months since this application was heard. The judgment states that the Applicant pointed out the permutations that could arise from the termination of Tarsica's lease, none of which, in the Honourable Judge's view, were relevant to the relief sought by the Applicant.[15] The Applicant states that it does not intend to hinder Tarsica's business, but Tarsica no longer has any rights to do so by using the Applicant's equipment.

19. The Applicant submitted that Tarsica had raised the issue in its application for leave to appeal the original order. Tarsica contended that the Applicant's conduct was a ruse to take illegal or unlawful possession of its business. The Court remarked that it was hardly a ruse but a right enjoyed by the Applicant as the equipment owner. This Court notes that different considerations apply when a court considers leave to appeal and when it has to interpret the order to determine whether there has been contempt of the order.[16]

20. The Applicant's approach to interpreting the order is untenable. It has limited itself to applying a textual meaning, contradicting the relief sought in the original notice of motion, where it proposed a two-stage access procedure to **remove** its equipment. The Applicant has conveniently failed to recognise the context within which the order was granted and the purpose of the relief thus ordered. As the Applicant has failed to interpret the order correctly, it has no basis to hold Tarsica responsible for the breach of the order. The Applicant cannot succeed with its prayer for a declaratory

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15 Para 60, judgment

16 HLB (supra) at para 24

order of contempt. That should be the end of the application. However, two further issues require this court's attention.

21. The application was brought urgently under rule 6(12). The only contention the Applicant makes to support urgency is that Tarsica has been in contempt of the original order since 19 August 2024. The Applicant contended baldly that by its very nature, the relief is urgent. The wholly suspended order sought was intended to be both coercive in the interests of the Applicant's court-ordered rights and vindicatory of this court's authority. The application was initiated on 18 October 2024, two months after the alleged urgency arose. The issue of urgency altogether escaped Tarsica's attention in its answering affidavit and written and oral submissions. The Applicant does not make out a case for urgency, and this application fails to be dismissed on that ground alone.

THE ORDER FOR CONTEMPT

22. An applicant seeking an order of contempt must show that an order was granted against the contemnor, the alleged contemnor was served with the order or had knowledge of it, and the alleged contemnor failed to comply with it. Once the preceding elements are established, wilfulness and *mala fides* are assumed. The Respondent bears the evidentiary burden of dispelling its alleged wilfulness and *mala fides*. Contempt would have been established if the Respondent failed to discharge this burden.[17]

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[17] Fakie N.O. v CCII Systems (Pty) Ltd [2006] ,ZASCA 52; 2006 (4) SA 326 (SCA) (Fakie), Secretary of the Judicial Commission of Inquiry into Allegations of State Capture, Corruption and Fraud in the Public Sector including Organs of State v Zuma and Others (CCT 52/21) [2021] ZACC 18; 2021 (9) BCLR 992 (CC); 2021 (5) SA 327 (CC) (29 June 2021) at paras 9 and 37 ("Secretary of the Judicial Commission of Inquiry")

23. The Applicant sought a declaration that Tarsica, Sterianos, and Psomas were in contempt of paragraphs 3 and 4 of the February order. The interpretation of the original order does not accord with the meaning that the Applicant seeks to attach to it. As alluded to, the order envisaged the removal of the tanks and not their retention. The order, properly interpreted, imposed reciprocal obligations on the parties to facilitate the removal of the tanks. The Applicant has not complied with its obligations. Tarsica is not in contempt of the original order.

24. The Applicant further sought a wholly suspended ancillary order for Tarsica to pay a fine of R200 000 and for Sterianos and Psomas to be committed to a period of imprisonment of 30 days. The fine and committal would eventuate if the First to Third Respondents impeded or interfered with the Applicant's access to secure and/or remove the Applicant’s equipment. The Applicant thus sought a coercive rather than a punitive order. It sought to elicit the First to Third Respondents' compliance with the original order, as it interpreted it, and dissuade any offensive conduct. A punitive sanction imposes the sentence immediately.[18]

25. Whilst the Applicant defined the circumstances in which the sentence would be invoked, it failed to justify the sentence sought in its affidavits or written and oral arguments. The Court considers the nature and severity of the contempt, the impact on the administration of justice, and the need to uphold the Court's authority. The applicant must present a compelling case for the proposed sentence, and the court will exercise its discretion to determine an appropriate sanction. Whilst a coercive order of contempt incidentally vindicates a Court’s authority, that order becomes punitive once the Respondent fails to comply. Thus, equal

[18] Secretary of the Judicial Commission of Inquiry at para 47

rigour is involved in imposing coercive orders that entail imprisonment and the restriction of an individual's liberty.

26. An Applicant can revert to the Court once a coercive contempt order is breached to facilitate an appropriate sentence. However, an Applicant seeking the imposition of a fine or imprisonment in a wholly suspended coercive sentence has to justify the punishment sought. There is no reason why the factors identified by the apex Court for the imposition of punitive contempt orders should not apply in determining a coercive order in so far as it seeks the imposition of a fine or imprisonment. These include, among others, the circumstances leading to the contempt, the nature of the offence, the nature of the breach, whether the breach is ongoing, and sanctions imposed in similar contraventions. In exercising its discretion, a Court will impose a just and equitable sanction.[19]

CONCLUSION

27. The Applicant sought an urgent declaratory order for contempt and wholly suspended coercive ancillary relief, entailing a fine for the First Respondent and imprisonment of the Second and Third Respondents for further breaches of the original order issued in February 2024. The circumstances informing the original order emanate from the Applicant's contractual and common law right to vindicate its branding material and equipment. The ownership of the materials and equipment was not in dispute. The Applicant had already retrieved its branding material and petrol pumps, and the application for contempt related to the three underground petrol tanks alone. The tanks' extraction was subject to statutory municipal and provincial clearances to ensure safety and prevent environmental contamination.

[19] Secretary of the Judicial Commission of Inquiry at paras 127 and 128.

28. In adjudicating the application for declaratory relief, the Court undertook an interpretation of the original order to determine whether there was contempt of the order. The Court interpreted the order by following the recognised rules of interpretation of legal documents in general and judgments and orders in particular. The Court formed an overall impression of the relief sought by analysing the disputed meaning of the phrase “secure and or remove” used in paragraph 3 of the order. The Court considered the meaning of the phrase in the context of the whole judgment, the circumstances wherein it came into being and the purpose for its inclusion in the order. Although it was set out sequentially in this judgment, the textual, contextual, and purposive interpretative exercise was conducted unitarily. The characterisation of the exercise as obtaining an overall impression equates to a unitary or holistic view of interpretation.[20]

29. The Court established the meaning of the words used in the phrase “secure and/or remove” singularly and cumulatively before contextualising it to the original judgment to determine the circumstances that gave rise to its usage and the purpose of its inclusion in the order. The original judgment confirmed the Applicant’s entitlement to remove its branding and equipment, both contractually and in terms of the common law. The original judgment then proceeded to determine how the removal of the tanks should proceed. The parties were invited to jointly propose a stratagem for the safe and lawful removal of the tanks. They failed to agree. The Court sought an equitable solution. It was acknowledged that Tarsica would continue using the tanks until the

[20] See the exchange between two of the Honourable Justices of the Constitutional Court on the approach to interpretation in Independent Community Pharmacy Association v Clicks Group Ltd and Others (CCT 11/22) [2023] ZACC 10; 2023 (6) BCLR 617 (CC) (28 March 2023) at paras 168-205 and 238 et seq.

Applicant secured and removed them. The Court ordered Tarsica to provide access to the Applicant to monitor the tanks and mitigate any risk from its ongoing usage. The original order allowed the parties thirty days to prepare for the removal of the tanks, Tarsica to source replacement equipment and the Applicant to obtain the statutory clearances.

30. The relief ordered originally was directed at removing the tanks. There is no evidence that the Applicant has secured municipal and provincial endorsement for their removal. Tarsica asserted that the Applicant intended to secure the tanks, thereby locking them out of Tarsica's usage and squeezing them out of business. The order allowed Tarsica to use the tanks until they were removed. The Applicant did not disclose in its founding affidavit it had learnt of the landowner's intention to terminate its lease with Tarsica. The lease agreement had allegedly been terminated in February 2024. The Applicant hedged its chances of negotiating the disposal of the tanks with the new lessee. Tarsica asserted that it intended to challenge the termination of the lease. The original judgment and orders did not contemplate a situation where the Applicant would secure the tanks and not remove them. The original order envisaged an equitable solution for both parties.

31. This Court, therefore, declines to declare that the First to Third Respondents are in contempt of the original court order issued on 28 February 2024. This Court has also dealt with the coercive order of contempt sought by the Applicant and its failure to justify its proposed sentence. In any event, the Applicant failed to make out a case for urgency, and the application fell to be dismissed on that ground alone.

COSTS

32. The original judgment refers extensively to the intemperate use of language and the scandalous, vexatious, scurrilous, and abusive allegations directed at the Applicant in general and the Applicant's legal advisor who deposed to the Applicant's founding affidavit, in particular. Tarsica's answering affidavit in the original application was settled by Counsel, who represented it in this application. The Court seriously considered the egregiousness and vexatious accusations and the obstructive conduct adopted by Tarsica in the answering affidavit but stopped short of imposing a punitive costs order against it.

33. Undeterred, Tarsica repeated some of the scurrilous accusations against the Applicant's legal manager in the papers filed in this application. Tarsica's Counsel, who settled the papers in this application, repeated some of those accusations in oral argument until the Court found it necessary to censure him. This Court has also mulled over the necessity of protecting its processes from abuse by litigating parties and legal practitioners. Fortunately, it would seem that the latter are in the minority. Legal practitioners are obliged to uphold the standard of practice in settling papers and show respect to their fellow practitioners and the Court.

34. On the other hand, the Court has to weigh whether this application merits a punitive costs order given that the Applicant has not made out a case for the relief it sought or for enrolling it urgently. Counsel for Tarsica requested the normal costs order and declined to have his fees assessed on a higher scale, even though he appeared to be

a seasoned practitioner. Counsel for the Applicant did not pursue any punitive reduction in the costs that Tarsica would be entitled to, even though the Applicant sought attorney-client costs arising from the abusive and vexatious attacks directed at the Applicant if it prevailed.

35. The Court is satisfied that an order for costs on the party and party scale without rewarding Counsel with a higher scale of fees is the appropriate order to make in this application.

ORDER

36. The Court declines to declare that the First, Second and Third Respondents are in contempt of paragraphs 3 and 4 of the order issued under case number 3424/2024 on 29 February 2024,

37. The application is dismissed with costs.

Ajay Bhoopchand
Acting Judge of the High Court
Western Cape Division
Cape Town

Judgment was handed down and delivered to the parties by e-mail on 11 November 2024

Applicant’s Counsel: Advocate D R Pietersen

Instructed by Joubert, Galpin & Searle

Counsel for the Respondents: Advocate B G Savvas

Instructed by MKA Attorneys