REPUBLIC OF SOUTH AFRICA

IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, JOHANNESBURG

Case Number: **19753/2019**

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

3 April 2025
DATE

[redacted]
SIGNATURE

In the matter between:

LEKARAPA HARRY LEKALAKALA Applicant

and

TRANSNET SOC LIMITED First Respondent

STANLEY MAMAREGANE Second Respondent

MICHELLE PHILLIPS Third Respondent

ANDILE SANGQU Fourth Respondent

LEBOGANG LETSOALO Five Respondent

MARTIN DEBEL Sixth Respondent

DIPAK PATEL Seventh Respondent

BUSISA JIYA	Eighth Respondent
PEARL ZAMBANE	Ninth Respondent
BOITUMELO SEDUPANE	Tenth Respondent
FHOLISANI MUFAMADI	Eleventh Respondent
REFILWE BUTHELEZI	Twelfth Respondent
ELIAS MONAGE	Thirteenth Respondent

JUDGMENT

Mahomed J

INTRODUCTION

[1] This is an application for security for costs in terms of Uniform Rule 47 (3) of the Uniform Rules of Court, the applicant contended that the respondent is vexatious in his litigation and is abusing the court process. The respondent has launched a second recission application on the same basis, which the according to the applicant is badly conceived and has no prospects of success. Furthermore, the applicant prays for an order that the recission application be stayed until he pays security for the its legal costs.

BACKGROUND

[2] The applicant is a public entity, who employed the respondent in a managerial position in its legal department.

[3] The respondent brought an application in terms of the Promotion of Access to Information Act 2 of 2000 ("the PAIA application), to review and set aside the applicant's refusal to grant him access to a forensic report it commissioned ("the PWC report"). The application was heard by van der Schyff J, the court dismissed his review application when it refused to condone the inordinate delay in filing of his papers. The applicants were granted costs. On 23 March 2020, the learned judge dismissed the respondent's leave to appeal application with

costs. On 24 August 2021, 18 months after that judgment was delivered, he brought a recission application, ("the first recission application") on grounds that the court was influenced by applicant's failure to disclose to the court that the report he sought was finalised. In his founding papers for recission , he stated that he learnt that the report was finalised as at the date of the hearing of the review application. The further evidence is that the respondent withdrew this application but failed to tender the costs. Thereafter he sought to amend the notice of motion in this withdrawn application, an objection was raised, he failed to rectify the irregularity and was met with a R30 application, which was successful and Bokako AJ awarded the applicant the costs in this application.

[4] In December 2023, more than three years after the judgment by van der Schyff, the applicant launched a second recission application on the same grounds as the first recission application, only this time he cited several additional respondents, without any indication as to their interest in this matter. The applicants requested him to file security for costs, which he ignored and the applicants were therefore forced to bring this application.

Application in terms of Rule 47(3)

[5] The applicants seek an amount of R500 000 as security and counsel submitted that this court must grant this application as the respondent will not stop, he draws the applicant into litigation, he ignored court orders, he and his attorneys ignored the applicant's correspondences, he avoids the sheriff who reported that he was unable to serve the warrant of execution at the given address because the respondent was unknown at the address. Baloyi SC appeared for the applicants and submitted that the respondent pursues his litigation simply to annoy the applicant, his former employer, she submitted that there are no prospects of success in the recission application because van der Schyff J dismissed the application for the reason that the respondent failed to provide a reasonable explanation for his long delay, 3 years in launching the application.[1] Counsel directed the court to paragraphs 48 and 50 in the judgment and submitted that the court was clear, he was not prevented from pursing his

[1] Judgment CL 0002-12 para 48

application to access to the report. Advocate Mabuza in reply referred the court to paragraph 6 of the judgment[2], where the court noted that the respondent conceded that he could use the leaked report to pursue the relief he seeks. It is uncertain as to why the respondent in casu, persists with his argument that his rights in terms of s 32 of the Constitution were violated.[3]

In Limine

[6] The first two points in limine related to the applicant's late filing of its application before this court. Baloyi SC submitted that the rule does not refer to a time for filing of the application but provides that should the party who is requested to file security fail to do so, the applicant must in 10 days thereafter file a notice of application. She submitted the applicant's delay of 17 days is negligible and cannot be viewed as unduly late or prejudicial, counsel argued the applicant need not have to apply for condonation. The respondent argued in limine that the applicant filed a notice for security in the first recission application an has done nothing in that regard, since its withdrawal, and has therefore waived its rights to claim security off him. Baloyi SC denied that the respondent waived its security for costs, and contended that the notice issued in regard to the first application, has not been withdrawn and argued that that recission application has nothing to do with the application before this court, the respondent conflates the two applications, is opportunistic, simply to muddy the waters. It was submitted that the respondent must know this, he is legally trained, the second application has a new case number. It was argued that the waiver point is misguided and no facts are before this court to make out a case for a waiver, the attempts to negotiate had failed and the notice for security is not withdrawn or waived. In the fourth point in limine, the respondent questioned the authority of the deponent in this application. Counsel referred the court to the judgment in *Eskom v Soweto City Council*[4], where the court confirmed that if the authority of the attorney to act is not challenged, the point on authority is meritless. Also see *Ganes and Another v Telcom Namibia Limited*[5] where the court held that the

[2] CL 0002-3
[3] Act 108 of 1996
[4] 1992(2) SA 703 (W) at 705 D-H,
[5] 2004 (3) SA 615 (SCA) at 705 A-D

deponent to the affidavit does not have to be authorised but that the *"institution of the motion and its prosecution that has to be authorised."* I agree with the submissions made, the delay is negligible and could not have prejudiced the respondent. The points in limine are dismissed, as regards the authority of the deponent, this court shares the view by Fleming J, supra, who stated, "*I find regularity of arguments about the authority of a deponent to be 'unnecessary and wasteful.'* " It is noteworthy that the respondent failed to challenge the arguments by the applicant on any of the points he raised in limine.

[7] Baloyi SC contended that despite demand the respondent refuses to furnish the applicant with security for its costs. Counsel submitted that the applicant, a public entity, relies on public funds to litigate in this matter. The court was reminded that although the respondent represents himself, he has attorneys, who accept pleadings and correspondence on his behalf, and therefore it is not unreasonable to conclude that he is legally represented throughout in this matter. It was contended that the respondent is evasive, the applicants have not been able to execute any of their cost orders. The sheriff tried to serve a warrant at the address he provided in his papers and was advised that he was unknown at the address. Furthermore, his attorneys were advised of the sheriff's report, they were requested to advise the applicant of their client's correct address. No response was forthcoming. In reply, Advocate Mabuza referred me to the applicants reply[6] where the respondent was invited to submit his address even before this hearing and submitted that even to the date of this hearing the applicant does not have any other address for the respondent.

[8] The respondent, Mr Lekalakala, denied that his second application for recission of the judgment is vexatious, he insists he is bona fides and he has good prospects of success. He submitted that the court in its judgment identified a legally sound basis for his recission. In his view, the condonation and the fraud are interrelated, they cannot be separated, he referred the court to paragraphs 47 to 50 of the judgment, for context. He submitted that he was late because he was being strung alone by the applicants regarding the existence of a final report. He argued that the applicants are abusing the court process, when they insisted

[6] CL 001 - 226

on pursuing their Rule 30 application. The applicant could have agreed to his amendment to his notice of motion in his first recission application and the matter would have proceeded, he contended they were obstructive in withholding information or failing to disclose that the report was finalised, which delayed his launching his application, within reasonable time. The respondent denied that he was being evasive and contended that as a whist blower he is concerned for his safety and has warned his family not to entertain strangers, he did not know that the sheriff visited his home and insisted that he owned and lived at the address at the time the papers were drafted but has subsequently sold that home and moved. He undertook to provide the applicants with full and complete details after this hearing. The respondent submitted that the court must do a balancing act and in doing so, must consider the importance of the matter to the parties. He argued that he played a principal role in the investigation and the report will enable him to demonstrate that he was constructively dismissed from the applicants employ. The applicant on the other hand is frustrated in its efforts to recover its costs, it is a public entity which relies on public funds.

JUDGMENT

[9] Counsel for the applicant argued that the respondent has instituted action proceedings against the applicant on the same grounds as the motions and in which he relies on a report he has in his possession to pursue his claims, nothing prevents him from using the same report to clear his name in the recission. In paragraph 7 above I set out the respondent's attitude to the litigation of the recission applications. I am often intrigued by a party who blatantly ignores, orders of court and then turns to the very court for assistance to uphold his constitutional rights. The evidence before me is that to date the applicants have no address to execute their cost orders. There is no reasonable explanation as to why his attorneys of record failed to respond to the applicant's request for a proper/correct address for their client, they were alerted to the sheriff's report and a further request for and address was made when the replying papers were served. If a party demands a right to a hearing, then surely, he must be traceable, reachable, contactable. If one has regard to the number of judgments granted by default, because parties are no longer at their chosen domicilum address,

they have only themselves to blame. It is common cause that the applicant does not have his address, because at the hearing of this matter, the respondent "volunteered" to inform them of his address *after the hearing of this matter*. It is reasonable to conclude that the respondent did not want to be traced, his attorney's must have known of his safety concerns as well as his whereabouts, they simply gave the applicants a run around. It is noteworthy that the respondent did not attempt to collect the court process from the sheriff, nor have his attorneys engaged with the applicants in regard to payment of the taxed bill of costs. I am of the view that the applicant's fears for recovery of their costs in the future are not unfounded.

[10] The Vexatious Proceedings Act 3 of 1956 provides relief for an applicant who can demonstrate that a respondent has persistently instituted legal proceedings without reasonable grounds. The Act also ensures that the functioning of the court is not impeded by groundless and unmeritorious proceedings. The respondent insists that he has good prospects of success for is recission application on grounds which were clearly not the reason for the dismissal of his application. I am not persuaded by Mr Lekalakala's contention that the condonation and the fraud are interlinked and therefore his claim has merit. The court dismissed his application because he failed to provide a reasonable explanation for his undue delay, if they were interlinked as he alleges, it did not assist him before van de Schyff J, and it is no longer open to him to have a rerun in that regard.

[11] In *Beinash and Another v Ernest and Young and Others*[7], the court considered the constitutionality of s2(1)(b) of the Vexatious Proceedings Act 3 of 1956 and found, "the provision does limit a person's right of access to court, however such limitation is reasonable and justifiable, juxtaposed against the effective functioning of the courts, the administration of justice, and the interest of innocent parties who are subjected to vexatious litigation. The limitation in terms of s 36 of the Constitution is justified to protect and secure the right of access for parties with meritorious claims.

[7] 1999 (2) SA116 CC

[12] I find the application must succeed, one must have regard to the effect of the respondent's and his attorney's behaviour on the applicants and their rights, they are dragged into court on the same meritless basis, the applicants are unable to execute cost orders they have been granted and are still to be drawn into further action proceedings without any hope of ever recovering their costs. The action proceedings are for the same relief, and each time the applicant has to outlay costs for legal representation, whilst the respondent, allegedly represents himself.

[13] Baloyi SC submitted that an amount of R300 000 would be fair but agreed that the amount for security is in the court's discretion.

[14] Counsel for the applicant addressed the court on punitive costs de boni propriis although not included in their papers. She submitted that such an order is appropriate and referred the court to the judgment by Wilson J, in which the attorneys for the respondents were called to make submissions as to why such an order should not be granted given their behaviour. I was keen to follow the route however, I am not inclined to further delay the finalisation of this dispute, considering the pending action proceedings.

[15] As I mentioned earlier the attorneys silence , their lack of cooperation and their position, "in the background", is gamesmanship that unfairly impinges on the applicant's rights to finalisation of matters. I am of the view that costs on a punitive scale are appropriate.

ORDER

[16] I therefore, make the following order:

1. The respondent is to pay R300 000 as security for the costs of the applicant in the form of a bank guarantee.
2. The respondent's recission application, under case no. 19753/2019 is stayed pending the furnishing of the guarantee.

3. The applicant is granted leave to bring an application in terms of Rule 47 (4) for the dismissal of the respondent's recission application on these papers, supplemented, if necessary, in the event that security is not furnished,
4. The respondent shall pay the applicants costs on an attorney client scale, including cost of two counsel on scale C.

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Mahomed J
JUDGE OF THE HIGH COURT
JOHANNESBURG

Date of hearing: 29 January 2025

Date of Judgment: 3 April 2025

For the Applicant:	MS Baloyi SC and V Mabuza instructed by Diale Mogashoa Attorneys
For the Respondent:	Mr LH Lekalakala- self represented, attorney's on record MWIM & Associates Inc.