THE SUPREME COURT OF APPEAL OF SOUTH AFRICA
JUDGMENT

Reportable
Case No.: 652/2018

In the matter between:

MEMBER OF THE EXECUTIVE COUNCIL FOR THE DEPARTMENT OF CO-OPERATIVE GOVERNANCE AND TRADITIONAL AFFAIRS **APPELLANT**

and

JABULANI CROSBY MAPHANGA **RESPONDENT**

Neutral citation: *MEC for the Department of Co-operative Governance and Traditional Affairs v Maphanga* (652/2018) [2019] ZASCA 147 (18 November 2019)

Coram: Maya P, Wallis, Mbha and Dambuza JJA and Weiner AJA

Heard: 27 August 2019

Delivered: 18 November 2019

Summary: Procedure – vexatious proceedings – requirements for an order prohibiting the institution of legal proceedings under s 2(1)*(b)* of the Vexatious Proceedings Act 3 of 1956 and s 173 of the Constitution – requirements for the grant of a final interdict restated.

ORDER

On appeal from: KwaZulu-Natal Division of the High Court, Pietermaritzburg (Gorven J sitting as a court of first instance):

1 The appeal is dismissed with costs.

2 The cross-appeal is struck from the roll.

JUDGMENT

Maya P: (Wallis, Mbha and Dambuza JJA and Weiner AJA concurring)

[1] This is an appeal against a decision of the KwaZulu-Natal Division of the High Court, Pietermaritzburg (Gorven J). The court a quo dismissed the bulk of relief sought in an application launched by the Member of the Executive Council for the Department of Co-operative Governance and Traditional Affairs, KwaZulu-Natal (MEC), against the respondent, Mr Jabulani Crosby Maphanga. The main relief was sought under s 2(1)*(b)* of the Vexatious Proceedings Act 3 of 1956 (the Act) alternatively, the common law. The appeal is brought with the leave of the court a quo. Mr Maphanga also filed a cross-appeal without first seeking leave therefor.

[2] The matter has a long and unhappy history for Mr Maphanga, which stretches back to the dawn of democracy. This appeal is the latest step in his attempts to resolve a dispute which started between him and his erstwhile employer, the appellant's department, in 1998. Before 1994, Mr Maphanga was employed by the Natal Provincial Administration. Following the amalgamation and rationalisation process in terms of which the provincial administrations of the former TBVC homelands were

incorporated into the structures of the new democratic government, Mr Maphanga was absorbed into the Department of Local Government and Housing. According to him, the problems began at that point as he was not afforded a promotion to which he was entitled and suffered ill-treatment at the hands of the Department.

[3] His foray into litigation started with a claim, which he brought in the Labour Court, seeking promotion or appointment to certain positions within the Department. The Labour Court dismissed the claim in November 1998 on the basis that it had no jurisdiction as the dispute predated the empowering legislation, the Labour Relations Act 66 of 1995 (the LRA). His subsequent action in the Industrial Court, which was finalised in August 1999, was unsuccessful. That tribunal took the view that the claim should have been pursued in the civil courts. Thereafter Mr Maphanga lodged complaints with various bodies, including the Public Protector, the South African Human Rights Commission and the City Press newspaper. He also complained in writing to a Member of Parliament and the Parliamentary Portfolio Committee on Justice. All these efforts, which ended in 2004, came to naught. In the midst of these processes, in June 2000, he accepted a voluntary severance package and thus terminated his employment with the Department.

[4] After a long lull, in May 2013, he referred an unfair labour practice dispute to the General Public Service Sectoral Bargaining Council (the Bargaining Council) in respect of the Department's failure to promote him. These proceedings also failed as the Council refused to condone the 12-year lapse since he left the Department's employ. His attempt to have this decision reviewed by the Labour Court was dismissed in November 2014. And so was the application for leave to appeal and his petition to the Labour Appeal Court a year later, after he failed in the Labour Court. In September 2016 he served application papers on the Department in which he sought leave to appeal from the Constitutional Court. He has, however, not pursued those proceedings.

[5] In June 2016, Mr Maphanga delivered a notice of his intention to institute legal proceedings against the MEC in terms of the Institution of Legal Proceedings against Certain Organs of State Act 40 of 2002. Thereafter, he launched an action in the KwaZulu-Natal Division of the High Court, Durban. In that matter, he sought damages allegedly arising from the wrongful and unlawful sale in execution of his home by the Department, to settle his taxed costs bill of R41 174, 83, arising from his losses in the Labour Courts.[1] (We were informed at the hearing of the appeal that the high court had since dismissed the claim with costs.) He further referred a grievance to a 'complaints hotline' assigned to the State President.

[6] Upon receipt of Mr Maphanga's notice to sue, the MEC approached the court a quo seeking the following relief:

'1. [T]hat Respondent may not institute legal proceedings, in any high court or inferior court, against the applicant, her Department or any employee or former employee of the Public Service, unless Respondent first obtains, pursuant to an application which must be served on Applicant, leave from such court, which leave:

1.1 shall not be granted unless such court is satisfied that such proceedings are not an abuse of the process of such court and that there is *prima facie* ground for such proceedings.

1.2 may be granted on conditions, including a condition that Respondent may not institute any such proceedings, unless he first pays all moneys owing in respect of all and any costs orders that have been granted in favour of Applicant against Respondent.

2. Respondent may not institute any proceedings in any court without disclosing to such court a copy of this order.

3. It is declared that all and any claims that Respondent may have had arising from his employment, prior to 30 June 2000, in the public service:

3.1. have been finally determined in terms of the applicable labour law; and/or

3.2. have become prescribed in terms of the Prescription Act No. 68 of I969.

[1] The MEC denied that the Department was involved in the alleged sale in execution. She relied on the seeming lack of evidence in this regard and Mr Maphanga's allegations that his investigations revealed that the property was not sold in execution but was inherited by a Mr Raphael Maphanga and mysteriously transferred to his mortgagee, Ithala Bank.

4. Respondent is interdicted from defaming, insulting or harassing Applicant and all employees in her Department in relation to any claims and disputes arising from Respondent's said employment in the public service.
5. In particular, but without derogating from paragraph 4 above, Respondent is interdicted from referring to any forum or institution any complaint relating to his said employment in the public service, unless he first obtains leave from this court.
6. Respondent is ordered to pay the costs of this application on a scale as between attorney and client.'

[7] The MEC also brought an urgent interlocutory application and obtained interim relief in respect of prayers 1 to 4 of this Notice of Motion. She also sought the stay of the proceedings in the high court and the dispute referral to the Bargaining Council pending the finalisation of the main application. At the conclusion of the proceedings, in which the MEC sought to have the interim relief made final, the court a quo granted only the interdict sought in prayer 4, but only partially in respect of the defamation claim, and dismissed the rest of the application. The court a quo was not satisfied that the MEC met the requirements of s 2(1)*(b)* of the Act or the common law as she claimed.

[8] Mr Maphanga, who represented himself in the appeal and in all the litigation and disputes between the parties since the beginning, did not appear before us due to illness. But he indicated that the matter could proceed in his absence and also filed extensive and useful heads of argument which we considered sufficient for purposes of the hearing in the view we take of the matter. The appeal therefore proceeded in his absence.

[9] The MEC initially characterised the main issues regarding the relief sought in paragraphs 1, 2 and 3 of the Notice of Motion as follows: whether (a) the disputes and complaints referred to extra-curial and quasi-judicial forums constituted legal

proceedings for the purposes of s 2(1)*(b)* of the Act; (b) the inherent powers and discretion of a court to grant a restraint order in terms of s 173 of the Constitution require a history of persistent vexatious legal proceedings that are 'obviously unsustainable'; and (c) the respondent's claims in relation to his employment in the Department have prescribed. The gist of her argument was that the court a quo (a) overlooked, for purposes of s 2(1)*(b)*, that by March 2017 Mr Maphanga had instituted five legal proceedings, including the disputes referred to the Bargaining Council, against the MEC and (b) misconstrued the powers and discretion conferred on courts by the common law as codified in s 173 of the Constitution to address abuses of court process.

[10] During the hearing of the appeal, however, reliance on s 2(1)*(b)* of the Act was abandoned and the case was solely based on the 'court's inherent jurisdiction to determine its own process under common law as codified in s 173 of the Constitution'. Reliance was placed on this court's judgment in *Corderoy v Union Government (Minister of Finance)*,[2] which it was contended the court a quo misunderstood. I must point out at the outset that in the light of the view I have of the matter, the MEC could indeed not rely on s 2(1)*(b)* for reasons which I consider it necessary to set out in the circumstances of this case. But that did not entitle her to directly invoke the constitutional provisions to enforce her rights without first relying on the Act,[3] which, as I explain later in the judgment, was enacted to address the common law limits regarding the court's jurisdiction to grant curtailment orders against vexatious proceedings.

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

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[2] *Corderoy v Union Government (Minister of Finance)* 1918 AD 512.

[3] See for example, *Member of the Executive Council for Development Planning and Local Government, Gauteng v Democratic Party & others* 1998 (4) SA 1157 (CC); 1998 (7) BCLR 855; para 62; *Bato Star Fishing (Pty) Ltd v Minister of Environmental Affairs and Tourism & others* 2004 (4) SA 490 (CC); 2004 (7) BCLR 687 (CC); paras 21-26; *My Vote Counts NPC v Speaker of the National Assembly & others* [2015] ZACC 31; 2016 (1) SA 132 (CC) para 53.

'If, on an application made by any person against whom legal proceedings have been instituted by any other person or who has reason to believe that the institution of legal proceedings against him is contemplated by any other person, the court is satisfied that the said person has persistently and without any reasonable ground instituted legal proceedings in any court or in any inferior court, whether against the same person or against different persons, the court may, after hearing that other person or giving him an opportunity of being heard, order that no legal proceedings shall be instituted by him against any person in any court or any inferior court without the leave of that court, or any judge thereof, or that inferior court, as the case may be, and such leave shall not be granted unless the court or Judge or the inferior court, as the case may be, is satisfied that the proceedings are not an abuse of the process of the court and that there is prima facie ground for the proceedings.'

[12] It is clear from the ordinary wording of this provision that it brings within its purview actual or prospective litigation[4] brought or threatened by a person who has persistently, and without any reasonable ground, instituted legal proceedings in any court or inferior court, whether against the same or any other person or persons. The purpose of the provision is 'to put a stop to persistent and ungrounded institution of legal proceedings … in the Courts' ie to 'put a stop to the making of unjustified claims against another or others, to be judged or decided by the Courts'.[5] So, an applicant who seeks the protection of the provisions must establish, first, that the respondent has in the past instituted legal proceedings in a court against her, or any other person or persons persistently and without reasonable cause. Secondly, she must prove that further litigation has been brought against her or is reasonably contemplated.

[13] The question which arises is whether the procedures employed by Mr Maphanga, flowing from his dissatisfaction with the manner in which the Department treated him, constituted legal proceedings instituted in a court within the meaning of s 2(1)*(b)* of the Act. If they are such legal proceedings it must then be determined

[4] See *ABSA Bank Ltd v Dlamini* 2008 (2) SA 262 (T) para 24.
[5] *S v Sitebe* 1965 (2) SA 908 (N) at 911A-B; *Beinash & another v Ernst & Young & others* 1999 (2) SA 116 (CC) para 15.

whether they were persistent and without any reasonable ground.

[14] 'Court' is defined in s 1 of the Act as 'any provincial or local division of the Supreme Court of South Africa'. These definitions and the hierarchy of the South African courts derive from the Supreme Court Act 59 of 1959 which has since been repealed by the Superior Courts Act 10 of 2013. In terms of the repealed statute, 'inferior court' meant 'any court (other than a court of a division) which is required to keep a record of its proceedings, and includes a magistrate or other officer holding a preparatory examination into an alleged offence'. The Labour Court was not included in that definition of 'court' 'and inferior court' as set out in the repealed Act. Neither was the Industrial Court, which this Court held, in *South African Technical Officials' Association v President of the Industrial Court & others,* was neither a Division of the Supreme Court, as it is not mentioned in the First Schedule of the Supreme Court Act, nor an inferior court, as it is not required to keep record of its proceedings, but an administrative body which did not sit as a court of law at all, even when it discharged functions of a judicial nature.[6]

[15] The appellations of the courts have, however, changed with the advent of the Superior Courts Act. Thus the 'Supreme Court of South Africa' is now the 'High Court of South Africa' and a 'Superior Court' means 'the Constitutional Court, the Supreme Court of Appeal, the High Court and any court of a status similar to the High Court', such as the Labour Court. The 'inferior court' has become a 'lower court', which is defined as 'a court of a regional division and a magistrate's court established in terms of the Magistrates' Courts Act, 32 of 1944'.[7]

[16] The changes to the court designations flow from the Constitution which

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[6] *South African Technical Officials' Association v President of the Industrial Court & others 1*985 (1) 597 (A); cited in *Sidumo & another v Rustenberg Platinum Mines Ltd & others* 2008 (2) SA 24 (CC) para 82.
[7] In terms of s 74 of the Magistrates' Courts Amendment Act 120 of 1993.

describes the South African judicial system as follows:

'166 Judicial system

The courts are-

(a) the Constitutional Court;

(b) the Supreme Court of Appeal;

(c) the High Court of South Africa, and any high court of appeal that may be established by an Act of Parliament to hear appeals from any court of a status similar to the High Court of South Africa;

(d) the Magistrates' Courts; and

(e) any other court established or recognised in terms of an Act of Parliament, including any court of a status similar to either the High Court of South Africa or the Magistrates' Courts.'(Emphasis added)

However, the Act, which is 63 years old, has not kept abreast with these developments. Thus, its definition of 'court' remains unchanged and still refers to the 'Supreme Court of South Africa' which no longer exists. This anomaly requires the definitions of 'court' in the Act and the Superior Courts Act, which are *in pari materia* in this regard, to be construed in manner so as to be consonant.[8]

[17] Evidently, Mr Maphanga's complaints to the Human Rights Commission, the Public Protector, the Member of Parliament, the City Press newspaper and the Parliamentary Portfolio Committee on Justice were not legal proceedings and the referrals to these bodies did not constitute the institution of legal proceedings in a court. These forums and the Member of Parliament do not fit in any of the above definitions and are not 'courts' as envisaged by the relevant statutes; old and new.

[18] It must then be determined whether the dispute which was lodged with the Bargaining Council under the LRA was 'legal proceedings' for the purposes of s 2(1)(b) of the Act ie proceedings before a court or inferior court. Section 34 of the

[8] *Petz Products v Commercial Electrical Contractors* 1990 (4) SA 196 at 204H-I; *R v Maseti* 1958 (4) SA 52 (E) at 53H; *Assign Services (Pty) Ltd v National Union of Metal Workers of South Africa & others* 2018 (5) SA 323 (CC) para 107.

Constitution entrenches the right of access to courts by granting the right to have any dispute that can be resolved by the application of law in a fair public hearing before a court or, where appropriate, another independent and impartial tribunal or forum. Do such bargaining councils constitute a court or inferior court for the purposes of the Act? The answer is No. While they are independent and impartial tribunals for the purposes of s 34 and resolve labour disputes in a manner similar to courts,[9] there is clear authority that they are not courts. The Constitutional Court in *Sidumo*,[10] held that the Commission for Conciliation, Mediation and Arbitration was an administrative tribunal, not a court. In *Myathaza,* the same point was made about bargaining councils.[11]

[19] It follows that the disputes lodged by Mr Maphanga in the Bargaining Council enjoy no higher status than those referred to the other extra-curial bodies and were not legal proceedings instituted in a court or lower court. That leaves the review and appeal proceedings which he launched in the Labour Courts in 2014, after the enactment of the Superior Courts Act, and the damages claim concerning the alleged sale in execution of his house, which he brought in the high court against the MEC. I include the Labour Court because I accept, for present purposes, that as a matter of construction of the definition of 'court' in the Act, the fact that the Labour Court has a status equivalent to a high court brings it within the Act's ambit. So the first requirement of these provisions is met and it remains to determine whether the proceedings were persistent and without reasonable cause.

[20] On the question whether there have been persistent proceedings, I agree with the court a quo's approach in interpreting the section, and in this particular instance,

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[9] *Myathaza v Johannesburg Metropolitan Bus Services (Soc) Ltd t/a Metrobus & others* [2016] ZACC 49; 2017 (4) BCLR 473 (CC); 2018 (1) SA 38 (CC) para 23; *Food and Allied Workers' Union obo Gaoshubelwe v Pieman's Pantry (Pty) Ltd* [2018] ZACC 7; 2018 (5) BCLR 527 (CC); [2018] 6 BLLR 531 (CC) para 198.
[10] Ibid, fn 6 paras 84-88.
[11] Ibid, fn 7.

the word 'persistent'. Due account must be given to the language, context and purpose of the legislation.[12] Although constitutionally valid,[13] the legislation must nonetheless be accorded a narrow construction as it interferes with a protected right and restricts the right of access to courts, to avoid undue limitation of the right.[14] The word 'persistent' has a variety of meanings which include 'continuous, constantly repeated, recurring' and 'determined, dogged, steadfast, tenacious'.[15] The meaning envisaged in the present context must be a 'recurring' or 'constantly repeated or continuous' institution of legal proceedings in a court.

[21] As the court a quo rightly found, there has been no multiplicity of proceedings here and the fact that Mr Maphanga has not had legal representation throughout the litigation must bear some relevance. When the MEC launched these proceedings there were only review and appeal proceedings in the Labour Courts following the refusal of condonation by the Bargaining Council mentioned above. Whilst all these proceedings concerned the promotion dispute, it is clear that they multiplied merely because Mr Maphanga, who represented himself, failed to identify the correct forum in which to vindicate his claim. The proceedings in the high court were based on an entirely different cause of action as already stated. Similarly the dispute pending in the Bargaining Council, which concerns severance pay. Lastly, the proceedings that precipitated the present application were proceedings arising out of an alleged sale in execution of Maphanga's house, which was not an attempt to re-litigate his employment dispute over the failure to promote him. It cannot, by any stretch of the imagination, be found in these circumstances that there was a persistent or repetitive institution of legal proceedings in this matter.

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[12] *Natal Joint Municipal Pension Fund v Endumeni Municipality* [2012] ZASCA 13*;* 2012 (4) SA 593 (SCA) para 18.
[13] *Beinash*, fn 5, paras 17-21.
[14] *Regering van die Republiek van Suid-Afrika v Disotto en andere* 1998 (1) SA 728 (SCA) at 735D-E.
[15] '*Shorter Oxford English Dictionary'* 6 ed Vol 2.

[22] Neither can it be found that Maphanga approached the courts without any reasonable grounds. As I have pointed out, none of the proceedings in the Labour Courts (and the Industrial Court) were resolved on their merits. An unequivocal finding that the claims had no reasonable basis cannot be made on the available record. This is more so considering the strong indications from Mr Maphanga's uncontested allegations that he may indeed not have been treated fairly and properly during the rationalisation process of the civil service and his absorption into the Department.

[23] The same holds true for the damages claim launched in the high court. It is not possible to make a conclusive finding that it was instituted without any reasonable ground. This is so because the MEC, who bore an onus to prove otherwise, could not deny that the alleged sale in execution may have occurred before she assumed office. She merely cast doubt on Mr Maphanga's version based on his allegations about suspicious information that he claimed to have uncovered. That information did not detract from his core contention that his house was unlawfully sold in execution. To my mind, the fact that the claim was subsequently dismissed by the high court does not change the situation as one does not know the basis on which it was dismissed and whether or not Mr Maphanga will take it further on appeal. The MEC therefore failed to establish a right to the relief sought in paragraphs 1 and 2 of her Notice of Motion under s 2(1)*(b)* of the Act.

[24] I turn to deal with the MEC's mainstay argument, that she is entitled to the relief set out in paragraphs 1 and 2 of her Notice of Motion under the common law as codified in s 173 of the Constitution. In terms of the latter provisions, '[t]he Constitutional Court, the Supreme Court of Appeal and the High Court of South Africa each has the inherent power to protect and regulate their own process, and to develop the common law, taking into account the interests of justice.'

[25] It was firmly established in the South African common law, long before the advent of the Constitution, that the Supreme Court had the inherent power to regulate its own process and stop frivolous and vexatious proceedings before it.[16] This power related solely to proceedings in the Supreme Court and not to proceedings in the inferior courts or other courts or tribunals. The following principles crystallised over the ages. It had to be shown that the respondent had 'habitually and persistently instituted vexatious legal proceedings without reasonable grounds.[17] Legal proceedings were vexatious and an abuse of the process of court if they were obviously unsustainable as a certainty and not merely on a preponderance of probability.[18] I must point out at this juncture that this definition applied to all litigation that amounted to an abuse of court process. The attempt by the MEC's counsel to distinguish the cases from which the principle derives on their facts was, therefore, mistaken.

[26] A court must, in granting this type of relief, proceed very cautiously and only in a clear case, make a general order prohibiting proceedings between the same parties on the same cause of action and in respect of the same subject matter where there has been repeated and persistent litigation, and craft such order to meet only the immediate requirements of the particular case.[19] The stringent onus on the applicant who seeks the relief and the need for the court's caution in exercising this power obviously arise from the fact that the relief curtails a litigant's access to court.[20]

[27] The Act has neither repealed nor changed these common law principles. It is important to note in this regard that, as foreshadowed above, the Act was promulgated

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[16] *Western Assurance Co v Caldwell's Trustee* 1918 AD 262 at 271; *Corderoy v Union Government (Minister of Finance)* 1918 AD 512; *In re Anastassiades* 1955 (2) SA 220 (W); *African Farms and Townships Ltd v Cape Town Municipality* 1963 (2) SA 555 (A) at 565D-E.
[17] *Corderoy*, ibid, at 519.
[18] *African Farms*, ibid.
[17] *Corderoy*, ibid.
[18] *Corderoy* at 519; *Western Assurance Co*, at 273; *Fisheries Development Corporation of SA Ltd v AWF Investments (Pty) Ltd & others* 1979 (3) SA 1331 (W); s 34 of the Constitution.

in direct response to the decision in the *Anastassiades* case, which was cited with approval by the Constitutional Court in *Beinash*. This decision illustrated the inadequacies of the common law, in particular that the South African courts had no power under the common law, to impose a general prohibition that would curtail the plaintiff's right to litigate beyond the immediate requirements and the parties in the particular case. The contention made on the MEC's behalf that *Corderoy* 'did not attempt to define the limits of the kind of orders that can be granted in terms of a court's inherent powers' or 'state that other forms of 'persistent, vexatious conduct such as are present in this case [which] resulted in extra curial as opposed to judicial proceedings would' be excluded, was wrong. The court a quo correctly comprehended and applied the principles set out in the matter.

[28] The reasons I gave earlier for the finding that the MEC failed to show that Mr Maphanga persistently instituted legal proceedings against the Department and the MEC without reasonable grounds under s 2(1)*(b)* of the Act apply with equal force here and need not be repeated. Bearing in mind that the provisions relied upon and *Corderoy* cover only proceedings in the high court, Mr Maphanga clearly did not habitually and persistently institute legal proceedings against the MEC and the Department. Neither was it shown as a certainty that any of his claims were 'obviously unsustainable' in the manner envisaged in *African Farms.* Accordingly, no case was made out for the relief sought in paragraphs 1 and 2 of the Notice of Motion under the common law too.

[29] It remains to deal with the rest of the relief which the court a quo refused to grant. As indicated above, the MEC also sought far reaching declaratory relief in paragraph 3 of her Notice of Motion. She asked for an order that all claims arising from Mr Maphanga's employment in the public service prior to 30 June 2000 have been finally determined and have prescribed. It was argued that he had exhausted all his legal options and that it was inconceivable that he could still have a viable claim

that has not prescribed or became time-barred.

[30] This submission is beset by a number of challenges. The declaratory order would relate to claims that have not been identified. It is impossible to say in advance that such claims have prescribed. It is equally impossible to decide whether they have been resolved in terms of applicable labour law as we do not know what they are. Another insurmountable challenge for the MEC in this regard is that the high court and this Court have no jurisdiction to adjudicate claims brought under the LRA. Needless to say, this Court consequently does not have the power to make the determination requested by the MEC.

[31] There is no controversy regarding the interdictory relief which the court a quo granted in accordance with paragraphs 4 of the Notice of Motion. This is so because the cross-appeal which Mr Maphanga lodged was incurably flawed. As mentioned at the outset, he did not seek leave to bring the proceedings. Uniform rule 16(1)*(a)* requires a substantive application in every matter where leave to appeal is prescribed by law. The rule applies mutatis mutandis to cross-appeals. Thus, a respondent who wishes to cross-appeal must obtain leave to cross-appeal.[21] Mr Maphanga's cross-appeal therefore has no basis and cannot be entertained. This leaves the interdictory relief intact.

[32] Counsel for the MEC did not press us for the interdict sought in paragraph 5 of the Notice of Motion, to bar Mr Maphanga from referring any complaint relating to

[21] *South African Railways & Harbours v Sceuble* 1976 (3) SA 791 (A) at 794A-D; *National Union of Mineworkers of South Africa & others v Henred Fruehauf Trailers (Pty) Ltd* 1995 (4) SA 456 (A) at 475E-G.

his employment in the public service to any forum or institution. This was a prudent stance as it was not shown how his complaint to the Presidential hotline was injurious or damaging and amounted to harassment or defamation as alleged. No case was made out for this relief and it was properly refused.

[33] The prayer for the confirmation of the rule nisi granted on 17 March 2018, pending the finalisation of the main application, which included the final stay of the high court and the dispute before the Bargaining Council, must also fail in light of the dismissal of the proceedings upon which it was predicated. The requisites for a final interdict – a clear right, an injury actually committed or reasonably apprehended and an absence of similar or adequate protection by any other ordinary remedy – were not established.[22] The prayer simply had no foundation.

[34] In the result, the following order is made:

1 The appeal is dismissed with costs.
2 The cross-appeal is struck from the roll.

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MM MAYA

PRESIDENT OF THE SUPREME COURT OF APPEAL

[22] *Setlogelo v Setlogelo* 1914 AD 221 at 227.

APPEARANCES:

APPELLANTS:	DP Crampton
	Instructed by:
	PKX Attorney, Pietermaritzburg
	Lovius Block Attorneys, Bloemfontein
RESPONDENT:	No appearance