

SOUTH AFRICA / JUDGMENT

AD Trade Belgium SPRL Private Limited v Central Bank of the Republic of Guinea (57858/2021) [2025] ZAGPPHC 180 (18 February 2025) [2025] ZAGPPHC 180

COURT

North Gauteng High Court, Pretoria

BEFORE

L.A. Retief

CASE / FILE NUMBER

57858/2021

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IN

THE HIGH COURT OF SOUTH AFRICA

(GAUTENG

DIVISION, PRETORIA)

Case No: 57858/2021

(1)

REPORTABLE: No

(2)

OF INTEREST TO OTHER JUDGES: No

(3)

REVISED:

DATE

18 FEBRUARY 2025

SIGNATURE

In the matter between:

AD

TRADE BELGIUM SPRL PRIVATE LIMITED

Applicant

and

THE

CENTRAL BANK OF THE REPUBLIC OF GUINEA

Respondent

In

re:

AD
TRADE BELGIUM SPRL PRIVATE LIMITED
Applicant
and
THE
CENTRAL BANK OF THE REPUBLIC OF GUINEA
First
Respondent
THE
REPUBLIC OF GUINEA
Second
Respondent
STANDARD
BANK OF SOUTH AFRICA LIMITED
Third
Respondent
SOUTH
AFRICAN RESERVE BANK
Fourth
Respondent
This
judgment is prepared and authored by the Judge whose name is
reflected as such and is handed down electronically by circulation
to the parties / their legal representatives by email and by
uploading it to the electronic file of this matter on CaseLines.
The date for handing down is deemed to be the 18 February 2025.

JUDGMENT

INTRODUCTION

[1] This is an interlocutory application brought by the applicant to compel the first defendant [Central Bank] to provide an adequate response to their request for further trial particulars in terms of uniform Rule 21 [rule 21 compel relief]. The applicant's

rule 21 request is substantial in that it poses no less than 180 questions which it, submits are "strictly necessary" for its preparation.

[2] Central Bank contends that the applicant's rule 21 compel relief must be considered having regard to a separation order which was granted on the 30 June 2022 in terms of uniform rule 33(4) by Francis-Subbiah J in that, the rule 21 compel relief, at this stage of the litigious process, stands to be determined having regard to this order. The Central Bank argues that the separation order is clear and expressly and unambiguously provides that:

“1. The first defendant’s first to sixth special pleas as set out in its amended plea dated the 12 July 2022 (read with the corresponding portions of the plaintiff’s particulars of claim and replication) in the action instituted under the above case number (the action) are separated and shall be determined prior to any other issue in the action, as contemplated in rule 33(4) (the separated issues).”

2. Notwithstanding paragraph 1 above, the separation of the separated issues from the merits of the action shall not stay existing interlocutory applications relating to the action, nor shall it prevent the parties from bringing interlocutory applications relating to the separated issues. (own emphasis)”
- [3] The Central Bank argues that the applicant’s rule 21 compel relief must therefore be brought having regard to the separated issues only which it argues, is not the case and as such, the applicant’s compel relief should be dismissed.
- [4] The applicant, in argument, advanced that certain of the questions, which questions were not highlighted with any particularity, in its rule 21 request indeed relate to its preparation of the separated issues, particularly the Central Bank’s fifth special plea. On this basis, counsel advanced that the rule 21 compel relief should be granted. No amendment to the prayers of the compel relief was sought nor granted.
- [5] There is little doubt that the separation order must be applied. Procedurally, the application before this Court is indeed interlocutory relief, which was instituted by the applicant on the 2 August 2023, a date after the separation order. The application therefore is not ‘an existing interlocutory application’ as envisaged and as to be dealt in prayer 2 of the separation order. In consequence, the first question to be entertained is whether this interlocutory application, which is brought at this stage of the litigious process, relates to the separated issues. If so, the Court may enquire into the merits of the application.
- [6] Against this backdrop it must be borne in mind that the applicant initiated its rule 21 request in April of 2022, a date prior to the separation order being granted and, as such, the further particulars sought in the rule 21 notice were not sought with reference to the separated issues only. No interlocutory compel application was launched by the applicant prior to the separation order. Although the procedural timeline does not result in an automatic bar, by order, to seek compel relief in terms of the rule 21 request, it however does mean that, at this stage, the applicant must bring the rule 21 compel relief within the ambit of the separation order.
- [7] The Central Bank contended in argument that the application is not brought in compliance of the separation order. Therefore, it argued, on this basis alone the application should be dismissed. This argument warrants a proper analysis of the applicant’s founding papers.[1]

Does this interlocutory application relate to the separated issues?

- [8] At first blush the answer is no. This is because, the thrust of the applicant’s founding papers is centred around complaints ranging from difficulties experienced with its preparation of the merits in the main action, albeit its inability to prepare for trial on the merits and, the

difficulty it faces as a consequence thereof. In short, its difficulties to discharge its burden at trial. All such difficulties are laid at the feet of the Central Bank for its failure to answer, alternatively, the manner in which they did answer the rule 21 request. The summary of the applicant's complaints and difficulties was captured by the applicant in its founding papers at paragraph 6. In paragraph 6, the applicant summarises the reason for initiating the rule 21 compel relief. In simple terms the applicant required answers from the Central Bank emanating from “- pre-trial questions about money in its accounts held at Standard Bank. The plaintiff holds a judgment of R754 million against Guinea (the Republic of Guinea, the second respondent-own emphasis).” The necessity for the questions posed in the rule 21 request related to answers it required from pre-trial questions posed. No argument was made that the pre-trial questions, albeit which pre-trial questions, actually related to the separated issues. The complaints and difficulties appear to relate to the merits and the applicant's burden. This is a far cry from the separated issues attracting a rebuttal of the Central Bank's special defences.

- [9] In fact, the applicant in its founding papers failed to specifically deal with the separated order, not even under the heading “PROCEDURAL BACKGROUND’. It appears from its papers, when read as a whole, that the applicant forgot about the possible constraints and consequences of the separation order and simply forged ahead dealing with the discharge of its own evidentiary burden in the preparation of a trial on the merits. In this way, it appears that it hoped to catch a fish if the net was cast wider than the separated issues.
- [10] In an attempt now to overcome this difficulty, the applicant's Counsel in oral argument, contended that the compel relief is competent as against the Central Bank's fifth special plea. In such fifth special plea, the Central Bank relies on its separate legal personality as a fact. The applicant's Counsel in argument relied on paragraph 5.4 of the Central Bank's fifth plea. In paragraph 5.4, the Central Bank simply states as a fact that, in the absence of a Constitutional challenge to declare certain founding statutes it relied to factually demonstrate its separate legal personality[2] as unlawful, then as a fact or for that matter in law, the Central Bank possess a separate legal personality and therefore no basis exists for it to be disregarded.
- [11] The reliance by the applicant's Counsel on this sub-paragraph 5.4 to demonstrate an invitation by the Central Bank that it was going to rely on certain facts in support its separate legal personality other than the unchallenged law as it factually stands, to justify the rule 21 request an rule 21 compel relief is not only misplaced but an afterthought which is not underscored by its own papers. The applicant had ample opportunity to deal with the fifth special plea in a manner and on the basis of its understanding, but it did not. Instead, it in unequivocal terms in paragraph 6 told this Court under oath the actual reason for the rule 21 compel relief. The reason is not supported by its own Counsel's argument. A disconnect became clear.

[12] To bolster the, disconnect all the illustrations used by the applicant in its founding papers to demonstrate the Central Banks astounding and absurd answers to its further particulars request were, confined with reference to the Central Bank's plea over, on the merits. One of the illustrations was the complaint relating to the Central Banks answer in their plea over concerning their relationship with the second respondent and the need and call to pierce their corporate veil. This is dealt with in paragraph 24 of the applicant's founding papers. Instead of dealing with their understanding of the fifth special plea, in particular paragraph 5 or 5.4 as argued, the applicant rather on the papers deals with the Central Bank's answer in its plea over to paragraph 10 of its particulars of claim to bolster the compel relief. Paragraph 10 of the particulars of claim, consist of allegations in support of prayer 1.5 in which the applicant seeks that “

“1.5 the separate legal personalities of the first and second defendants be disregarded;”

[13] In paragraph 24 of the applicant's founding papers the applicant sets out the reason for the posed questions and its reciprocal complaint justifying the rule 21 compel relief:

“24. Thus, the most important question at trial (own emphasis) will be whether the funds of the accounts are, as the Central Bank alleges, held to maintain a foreign exchange balance to be used in emergencies and to overcome cash deficits. The questions posed relate to source of funds and purpose of transaction (own emphasis) yet the Central Bank refuses to answer any of these questions and asserts, absurdly, that the questions “do not seek particularity in relation to any averment made in the first defendant's plea (Central Bank – own emphasis)”.”

[14] No reference no reliance of the fifth special plea is found on the papers as argued. There is simply no basis that the compel relief relates to the separated issues. The first question answered, the necessity or the Court to entertain the merits of the papers filed as they are not necessary.

[15] There is no reason raised in argument or otherwise why the costs should not follow the result.

[16] The following order:

1. The application is dismissed.
2. The Applicant is to pay the First Respondent's costs, including the costs of two Counsel, if so employed, one Senior Counsel and one Junior Counsel, to be taxed on scale C.

L.A. RETIEF

Judge of the High Court

Gauteng Division

Appearances:

For the Applicant: Francois Joubert SC Zach Joubert Applicant's counsel Instructed by attorneys: PRIMERIO LAW INCORPORATED Attorneys for the Plaintiff 135 Daisy Street Sandton JOHANNESBURG 2031 Email: j.oxenham@primerio.international Email: m.currie@primerio.international C/O WEAVIND & WEAVIND INC Block E Glenfield Office Park Oberon Avenue Faerie Glen PRETORIA Tel: 012 346 3098 Email: hanro@weavind.co.za For the Respondent H F OOSTHUIZEN SC LENE BRIGHTON First Respondent's counsel Chambers, Pretoria and Sandton Instructed by attorneys: NKOANA ATTORNEYS Attorneys for the First Respondent Building 1 Maine Pegasus 210 Amarand Avenue Menlyn P.O BOX 3217 PRETORIA Tel: 012 003 2879 Cell: 082 766 5369 Email: kwena@nkoanakattorneys.co.za Date of hearing: 2025 Date of judgment: 2025

[1] MEC for Education, GP v Government Body, Rivonia Primary School 2013 (6) SA 582 (CC), par 94; Director of Hospital Services v Mistry 1979 (1) SA 627 (A) 637-6; Affirmed in President of the Republic of South Africa v South African Rugby Football Union 2000 (1) SA 1 (CC), par 150.

[2] Section 1 and 2, Article 2 of Act No L 2017 AN of 08 June 2017.

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