

SOUTH AFRICA / JUDGMENT

Aecom SA (Pty) Limited v Rustenburg Local Municipality (1341/2017) [2023] ZANWHC 8 (1 February 2023) [2023] ZANWHC 8

COURT

North West High Court, Mafikeng

BEFORE

Mahlangu

CASE / FILE NUMBER

1341/2017

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IN

THE NORTH WEST PROVINCIAL DIVISION, MAHIKENG

Case

no: 1341/2017

Reportable: YES / NO

Circulate to Judges:

YES / NO

Circulate to

Magistrates: YES / NO

Circulate to Regional

Magistrates: YES / NO

In

the matter between:

AECOM

SA (PTY)

LIMITED

Plaintiff

and

RUSTENBURG

LOCAL MUNICIPALITY

Defendant

DATE

OF HEARING:

31 October

2022

DATE

OF JUDGEMENT:

1 February 2023

Delivered: This judgment is handed down electronically by circulation to the parties through their legal representatives' email addresses.

The date for the hand-down is deemed to be 1 January 2023.

ORDER

In the result the

following order is made:

1.
The special plea is granted with costs.
2.
The plaintiff is given leave if so advised, to file the amended particulars of claim within 15 days of this order.

JUDGMENT

MAHLANGU AJ

[1] This is a special plea of non-locus standi.

[2] The plaintiff's claim in this action arise from a written agreement concluded on 19 June 2008 in which it undertook to provide design and construction monitoring services in connection with the construction of regional waste disposal transfer stations by or on behalf of the defendant.

[3] The plaintiff cited itself as follows in its simple summons:

"AECOM SA (PTY) LTD, previously known as BKS (Pty) Ltd, a company with limited liability and duly registered and incorporated in accordance with the company laws of the Republic of South Africa with its main place of business at 262A West Avenue, Centurion, Gauteng."

[4] In its amended declaration, the plaintiff was cited as follows:

"1. The plaintiff is AECOM SA (PTY) LTD (formerly known as BKS (Pty) Limited, a company with limited liability, duly registered and incorporated in accordance with the company laws of the Republic of South Africa, with principal place of business situated at 263A West Avenue, Centurion, Gauteng."

[5] The defendant opposed the action and filed a special plea of non-locus standi and a special plea of prescription. Only a special plea of non-locus standi was heard on the day of the trial. The following was a special plea by the defendant:

"1. The Plaintiff is claiming certain fees in respect of professional engineering services which claim stems from its Simple Summons served on the Defendant on 7 August 2017 and its Declaration which was served on the Defendant on 1 November 2018.

2. The Plaintiff has not alleged that it is duly registered engineering firm in registered in terms of the Engineering Profession Act 40 of 2000 (as amended) in either its Simple Summons served on the Defendant on 7 August 2017 or its Declaration which was served on the Defendant on 1 November 2018.

3. The Plaintiff accordingly does not allege facts of sustaining a cause of action for such professional fees and accordingly does not plead a case capable of being proven to establish that it has locus standi in audicio.”

[6] In replication to the defendant’s plea, the following was stated by the plaintiff:

“A) *AD FIRST SPECIAL PLEA-LOCUS STANDI-PARAGRAPHS 1 TO 3*

1. The Defendant alleges that the plaintiff does not have the required locus standi insofar as the plaintiff has seemingly not alleged that it is a duly registered engineering firm, registered in terms of Engineering Profession Act, 40 of 2000.
 2. The Plaintiff pleads that it is a registered engineering firm and that it is not necessary to plead this out in the citation.
 3. In addition to the aforesaid, the defendant has admitted that the bulk of the services, which forms the basis of the plaintiff’s claims have been attended to, as per paragraph 22 of the defendant’s amended plea.
 4. By the acceptance of the services, the defendant is estopped from relying on the issue of locus standi, where same may have existed.
 5. Wherefore the plaintiff prays for the dismissal of the first special plea with costs.”
- [7] The main issue in this special plea is that the plaintiff did not allege in its pleadings that it is a duly registered engineering firm in terms of the Engineering Profession Act 40 of 2000 (as amended) (The Act)

BACKGROUND FACTS

- [8] On or about 19 June 2018, at Johannesburg, the plaintiff and the defendant entered into a written service agreement (the SLA) in terms of which the plaintiff was appointed by the defendant to provide design and construction of monitoring services in connection with the construction of regional waste disposal transfer stations by or on behalf of the defendant.
- [9] The plaintiff would only be able to claim for work done on any part of the project once approval was obtained from the Municipal Infrastructure Grant.
- [10] The plaintiff could only commence with any particular stage of any of the sub-projects on the written instruction of the defendant.

Legal principles

- [11] The right to sue or be sued depends in the first place on capacity. In order to be capable of either suing or be sued, a person must have locus standi. It is therefore necessary for the plaintiff to allege in his or her summons or declaration facts sufficient to show that he or she has locus standi to bring an action. Locus standi concerns the sufficiency and directness of interest in the litigating party.

[12] Section 18(2) of the Act provides that:

“(2) A person may not practice in any of the categories contemplated in subsection (1), unless he or she is registered in that category”

[13] The defendant submitted that, in terms of section 18(2) of the Act, a person may only practice as an engineer if he or she is registered as an engineer with an engineering body and his or her membership subscription with the engineering body is renewed annually. The defendant further submitted that, the plaintiff did not establish in its declaration that it has locus standi and that it did not allege that it is duly registered in terms of the Act. There was a need for the plaintiff to be registered with an engineering body that would oversee its projects to protect the public. The defendant further submitted that, failure to register with an engineering body is an offence which is punishable in terms of section 41(3) of the Act which provides that:

“(3) A person convicted of an offence in terms of section 18(2), may be liable to a fine equal to double the remuneration received by him or her for work done in contravention of section 18(2) or to a fine equal to the fine calculated according to the ration determined for three years imprisonment in terms of the Adjustment of Fines Act, 1991.

[14] The plaintiff submitted that it was procedurally incorrect to make a special plea to the pleadings and that the defendant could have taken an exception. The plaintiff further submitted that, the special plea of locus standi is a technical complaint, if it was an exception it could have been cured by an amendment to its pleadings.

[15] The plaintiff further submitted that, section 18 of the Act makes reference to individual engineers and not to a firm of engineers. It further submitted that there is not requirement in the Act for a firm to be registered with an engineering body. I am of a view that these submissions are without substance, a firm of engineers cannot operate without being registered with any engineering body that would oversee its projects.

CONCLUSION

[16] I am of a view that the plaintiff failed to establish locus standi in the declaration. The plaintiff failed to allege in its declaration that it is duly a registered engineering firm in terms of section 18 of the Act. I am of a view that it is a statutory requirement to register engineers in terms of section 18 of the Act.

COSTS

[17] Cost should ordinarily follow the suit and I can find no basis to order otherwise.

[18] In the result I make the following order:

1. The special plea is granted with costs.

2. The plaintiff is given leave if so advised, to file an amended declaration within 15 days of this order.

ACTING JUDGE OF THE HIGH COURT

NORTH WEST DIVISION, MAHIKENG

APPEARENCES:

DATE OF HEARING:

31 OCTOBER 2022

DATE OF DELIVERY OF

THE

JUDGEMENT:

1 FEBRUARY 2023

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Prepared on 11 October 2026 · Esheria