

SOUTH AFRICA / JUDGMENT

AF - FSL Glass Distributors (Pty) Ltd v Thompson Khusela CC t/a Thompson Security Group (A3058/2018) [2019] ZAGPJHC 66 (13 February 2019)

[2019] ZAGPJHC 66

COURT

South Gauteng High Court, Johannesburg

BEFORE

Matsemela, M L Twala

CASE / FILE NUMBER

A3058/2018

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REPUBLIC

OF SOUTH AFRICA

IN

THE HIGH COURT OF SOUTH AFRICA

GAUTENG

LOCAL DIVISION, JOHANNESBURG

Case

Number: A3058/2018

In

the matter between:

AF
– FSL GLASS DISTRIBUTORS (PTY)
LTD Appellant
And
THOMPSON
KHUSELA CC
t/a Respondent
THOMPSON
SECURITY GROUP

JUDGMENT

MATSEMELA AJ

INTRODUCTION

[1] This appeal stems from the decision of the Honorable Magistrate De Beer dated 8 February 2018 in the Magistrate's Court for the magisterial district of Mogale City held at Krugersdorp in terms whereof Her Worship De Beer granted the judgment in favor of the Plaintiff together with costs. The parties have entered into a contract in which the Respondent is to supply security guards to the premises of the Appellant. The Appellant repudiated the contract when it was not in position to do so.

BACKGROUND

- [2] The Respondent instituted action against the Appellant for damages suffered as a result of the repudiation of the contract. The Appellant prevented the guards of the Respondent from entering the premises to be guarded. The magistrate granted judgment in favor of plaintiff in the amount R 69 949.22.
- [3] During or about 7 June 2012 the Appellant represented by L Snyman and the Respondent duly represented by M M Appelgryn concluded a written agreement. In terms of the said the Appellant would pay the Respondent a certain amount per month for security services. This amount was to be paid on the 25th day of the month in which the security services were to be rendered. The agreement would subsist for a period of one year at a time subject to termination thereof by either party by three calendar month's written notice at the end of the year.

ISSUES

[4] The appeal seeks to determine the following:

4.1 Whether Respondent established that it complied with the terms and conditions of the agreement or with the legislation.

4.2 Whether the Respondent was in material breach of the agreement and the Appellant was entitled to unilaterally terminate the agreement.

4.3 Whether the Respondent was entitled to damages when the agreement was repudiated

THE LAW

[5] In the case of *Datacolor International (PTY) Ltd V Intemerket (PTY) Ltd* 2001 (2) SCA SA 581 Nienaber JA said the following;

Repudiation has sometimes been said to consist of two parts: the act of repudiation by the guilty party, evincing a deliberate and

unequivocal intention no longer to be bound by the agreement, and the act of his adversary, “accepting” and thus completing the breach. So for example Winn LJ remarked in *Denmark Productions Ltd v Boscobel Productions Ltd* [1969] 1 QB 699 at 731F-732A:

“Where A and B are parties to an executory contract, if A intimates by word or conduct that he no longer intends, or is unable, to perform it, or to perform it in a particular manner, he is, in effect, making an offer to B to treat the contract as dissolved or varied so far as it relates to the future. If B elects to treat the contract as thereby repudiated, he is deemed, according to the language of many decided cases, to ‘accept the repudiation’ and is thereupon entitled (a) to sue for damages in respect of any earlier breach committed by A and for damages in respect of the repudiation, (b) to refrain from himself performing the contract any further.”

LEGAL ARGUMENTS

[6] It was submitted on behalf of the Respondent that there is an implied term of the agreement which provides that should the Appellant have any complaints or should any incidents arise the Respondent would be afforded an opportunity by the Appellant to remedy same following the Respondent’s own internal procedures.

[7] Allegations by the Appellant are to the guards would come to work drunk and diesel was stolen from their vehicles. It is common cause that the guards of the Respondent were chased away from the premises of the Appellant. In so doing they were prevented from performing in terms of the agreement. The Appellant repudiated the agreement when it was not supposed to. I agree with this submission

[8] It was argued further that Respondent did not establish on balance of probabilities the quantum of its damages and did not provide an explanation for its failure. Mr Thompson said that he got all the amounts from the wage registers and personally did the calculations

regarding the hiring of the radios, the tariffs of the day and night shift, the wage register and transport. This version was never

challenged under cross-examination. It is trite law that when evidence is led in the trial court and left unchallenged that evidence would stand and accepted by the court as the true version.

[9] It was further submitted that Respondent failed to comply with the provisions of the Private Security Industry Regulation Act, Act 56 of

2001. In failing to comply with the Act is not entitled to any amount claimed in the particulars of claim. This objection cannot be entertained as no evidence was led in the court a quo to substantiate this averment

- [10] It was further argued on behalf of the Appellant Respondent failed to comply with all the material terms in terms of the agreement as the Respondent did not provide the security officers with job description that had to be determine on site with responsible person in charge. I do not agree. Even in this instance the Appellant failed to lead evidence in the court a qou. The agreement duly commenced with both parties performing in terms of the agreement; the Appellant provided the requisite security personnel and the Respondent made the payment as agreed.
- [11] The Appellant submitted that it is not indebted to the Respondent as so claimed in that the security personnel provided by the Respondent to the premises of the Appellant, inter alia, lost a key of one of the Appellant's motor vehicles, was found to be under the influence intoxicating liquor while one duty and stole property belonging to the Appellant. It was further submitted that the Appellant terminated the agreement and was not obliged to pay the Respondent on 28 February 2013 for services rendered during the period of October 2012 to 14 January 2013. I do not agree. The Respondent duly provided the necessary invoices to the Appellant for the services that were rendered.

ORDER

[12] I therefore make the following order:

- (a) The appeal is dismissed with costs

MOLEFE MATSEMELA

ACTING JUDGE OF THE HIGH COURT

OF SOUTH AFRICA,

GAUTENG LOCAL DIVISION,

JOHANNESBURG

I AGREE and it is so ordered

M L TWALA

JUDGE OF THE HIGH COURT

APPEARANCE

DATE OF HEARING: 09 OCTOBER 2019

DATE OF JUDGMENT: 13 FEBRUARY 2019

FOR THE APPELLANT: NO APPEARANCE

INSTRUCTED BY: BOTHA VAN DER MERWE

ATTORNEYS

011 475 4224

FOR THE RESPONDENT: ADV SB NEL

INSTRUCTED BY: WYNAND du PLEIS ATTORNEYS

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Prepared on 14 October 2026 · Esheria