

SOUTH AFRICA / JUDGMENT

Agri v Tayob and Others (39802/2020) [2020] ZAGPPHC 575 (9 September 2020)

[2020] ZAGPPHC 575**COURT**

North Gauteng High Court, Pretoria

BEFORE

C J van der Westhuizen

CASE / FILE NUMBER

39802/2020

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Source record**IN THE HIGH COURT OF SOUTH AFRICA****GAUTENG DIVISION, PRETORIA****(1)****REPORTABLE: YES/NO****(2)****OF INTEREST TO OTHER****JUDGES: YES/NO****(3)****REVISED****CASE NO.: 39802/2020****In the matter between:**

TOUWSKAROO

AGRI

Applicant

and

MOHAMED MAHIER TAYOB

TAYFIN FORENSIC AND INVESTIGATIVE AUDITORS

TAYFIN FORENSICS (PTY) LTD

TAYFIN FINANCIAL ACCOUNTANTS (PTY) LTD

HOOGLAND FARM (PTY) LTD

(in business rescue)

HERMAN BESTER N.O.

THE

MINISTER OF RURAL DEVELOPMENT AND LAND REFORM

First Respondent

Second Respondent

Third Respondent

Fourth Respondent

Fifth Respondent

Sixth Respondent

Seventh
Respondent

JUDGMENT

VAN DER WESTHUIZEN, J

- [1] The applicant launched an urgent application for a mandatory interdict and ancillary relief against the first to fourth respondents. The rest of the respondents are merely cited insofar as they may have an interest in the outcome of the application.
- [2] The first to fourth respondents oppose the application on a number of grounds. The fifth and sixth respondents have filed answering affidavits, but do not oppose the application. They support the application and abide by the court's decision. The seventh respondent has indicated to the applicant's attorney that it supports the application as well, but does not intend filing an answering affidavit.
- [3] Most of the grounds of opposition are dilatory in nature. Those dilatory grounds do not warrant scrutiny in view of the urgency of this matter and the primary relief sought. The primary grounds of opposition will be dealt with below.
- [4] In terms of a Strengthening of Relative Rights Programme, the seventh respondent acquired the farm known as Hoogland. The aforesaid farm land was registered in the name of the seventh respondent and the fifth respondent was to conduct farming activities thereupon. The seventh respondent provided national empowerment funding in the form of grants for the fifth respondent to conduct the said farming activities.
- [5] The fifth respondent became financially distressed and was placed under business rescue. The sixth respondent was appointed as the business rescue practitioner. The first and second respondents were appointed to manage the affairs of the seventh respondent in respect of the fifth respondent. The applicant was appointed by the sixth respondent, with the consent of the first, second, fifth and seventh respondents, to conduct the farming activities on the Farm Hoogland for and on behalf of the fifth respondent in terms of the Business Rescue Plan since October 2019.
- [6] Since the applicant's aforementioned appointment and inception, the first to fourth respondents opened bank accounts in the applicant's name. The grants provided by the seventh respondent were deposited in those bank accounts. However, the first to fourth respondents had sole control over those accounts.

[7] The first to fourth respondents allegedly withdrew all the funds deposited in the said bank accounts in the name of the applicant and deposited those funds into their own banking accounts. This apparently occurred even after the first to fourth respondents had resigned on 29 April 2020.

[8] It is alleged that the seventh respondent directed the first to fourth respondents to refund or repay the amounts to the applicant. Despite various letters of demand by the applicant, the fifth, and the sixth respondents to repay or refund the amounts withdrawn by the first to fourth respondents, the first to fourth respondents failed to comply with

the demands. However, prior to the launch of these proceedings, the applicant, fifth, sixth and seventh respondents again served a letter of demand on 7 August 2020. The first to fourth respondents undertook to make payment by 12 August 2020. The said respondents reneged on the undertaking and on 13 August 2020, the applicant advised that it would launch this application. By 19 August 2020, the matter remained unresolved and this application saw the dawn of light.

[9] The first to fourth respondents were granted leave to oppose this application and to file their opposing affidavits by 14:00 on 25 August 2020. A notice of opposition was only filed on 27 August 2020 and the answering affidavit was filed on 31 August 2020, a day before the matter was to be heard.

[10] In an effort to prevent the application from proceeding, the first to fourth respondents made part payment of the monies allegedly due on 26 August 2020, a day after they were to file their answering affidavits. The first to fourth respondents withheld an amount of R100 000.00. The first to fourth respondents withheld the said amount and tendered to make payment thereof on condition that this application is withdrawn. They indicated that it would be used for legal costs, should the application proceed. The first to fourth respondents deny that an amount of R240 597.09 is owing. It is alleged by the first to fourth respondents that the document appended to their opposing affidavit bears proof of this fact. This application thus concerns the payment of R340 597.09, as well as the ancillary relief sought in the notice of motion.

[11] The grounds of urgency relied upon concern the availability of the monies alleged to be due and owing for the proper running of the farming activities and the payment of resultant costs.

[12] I heard argument on behalf of both parties on the issue of urgency and the merits. Judgment was reserved due to the volume of matters filed in the urgent court.

[13] The first to fourth respondents submitted that the payment on 26 August 2020 has removed any possible urgency for the hearing of the matter. They further submit that the balance of the relief is not urgent and that a dispute of fact exists in that regard. It is further submitted on their behalf that they have made complete disclosure of proper accounting of the funds in dispute. This is denied by the applicant.

- [14] It was submitted on behalf of the applicant that the alleged proof of proper accounting provided by the first to fourth respondents of the disputed funds, clearly indicates, on a simple arithmetic calculation, that no proper accounting has been provided and that the amount of R240 597.09 remains due. Further in that regard, the applicant persists with its relief for payment of the amount of R340 597.09 being the balance remaining after the payment of the amount on 26 August 2020. The record of alleged accounting relied upon by the first to fourth respondents does not bear out their contentions in that regard.
- [15] I am satisfied that this matter be treated as an urgent matter and is appropriately enrolled in this court.
- [16] The applicant has made a case for payment of the amount of R340 597.09.
- [17] In view thereof that the first to fourth respondents only made partial payment after the launch of these proceedings and their unauthorised withholding of the amount of R100 000.00 in lieu of costs, the applicant is entitled to its costs. The applicant seeks a punitive cost order against the first to fourth respondents in view of their alleged recalcitrant actions. In my view, the audacity to withhold monies not due to a party for payment of its legal costs should the legal proceedings against it continue, is reprehensible and a fair basis upon which to grant a punitive costs order.

I grant the following order:

1. The applicant's non-compliance with the forms and service provided for in Rule 6 of the Uniform Rules of Court is condoned and it is ordered that this matter be heard as one of urgency in terms of the provisions of Rule 6(12);
2. The first and/or the third respondents, jointly and severally, the one paying the other to be absolved, are ordered to pay the applicant the amount of R340 597.09 plus interest thereon at the rate of 8.75% from 15 July 2020 till date of payment;
3. The first and/or the third respondents, jointly and severally, the one paying the other to be absolved, are ordered to pay the applicant the interest upon the amount of R1 324 765.44 at the rate of 8.75% from 15 July 2020 till 26 August 2020;
4. The first, second, third and/or fourth respondents are directed to provide a true and proper statement of account, together with

substantiating documents reflecting all amounts, and the interest accrued thereon, they received on the applicant's behalf;

5. The first, second, third and/or the fourth respondents jointly and severally, the one paying the other to be absolved, to pay the costs of this application on the attorney and client scale.

C J VAN DER WESTHUIZEN

JUDGE OF THE HIGH COURT

Date of Hearing; 1 September 2020

On behalf of Applicant: S Guldenpfennig SC

Instructed by:

van Wyk van Heerden Attorneys

On behalf of Respondent: J H Lerm

Instructed by:

Mothilal Attorneys Inc.

Date of Judgment: 9 September 2020

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