

SOUTH AFRICA / JUDGMENT

Bhambatha Investments (Pty) Ltd v Vilakazi and Others (03339/2011) [2014] ZAKZDHC 62 (27 November 2014) [2014] ZAKZDHC 62

COURT

Kwazulu-Natal High Court, Durban

BEFORE

Victor

CASE / FILE NUMBER

03339/2011

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REPUBLIC OF SOUTH

AFRICA

IN THE HIGH COURT OF

South Africa

GAUTENG LOCAL DIVISION,

JOHANNESBURG

CASE NO: 03339/2011

DATE: 27 NOVEMBER 2014

In the matter between:

BHAMBATHA INVESTMENTS (PTY)

LTD.....Applicant

And

ALBERT NDELENI DUPREE

VILAKAZI.....First

Respondent

CYNTHIA LINDIWE

MATHE.....Second

Respondent

EDWARD

NATHAN.....Third

Respondent

SONNENBERGS (PTY) LTD

JUDGMENT

VICTOR J:

- [1] The applicant seeks leave to appeal against the judgment handed down on 22 January 2012.
- [2] An important point was raised in relation to the applicant of the three year delay in finalising this application for leave to appeal. It is astonishing that such a delay has occurred. Whilst it is correct I was on circuit court for a term it certainly was not for 3 years. This dilatoriness ought not to be condoned especially in the light of an absence of condonation or at least an explanation on affidavit. See *Universal Product Network v Mabaso* [2006] 3 BLLR 274 (LAC).
- [3] ‘In order to bring finality to this matter in my court I will nonetheless consider the merits of the application for leave to appeal.
- [4] The main area of appeal is this court's failure to make a finding that the first respondent acted fraudulently. Other issues were raised in argument. For example, the first respondent's breach of his fiduciary duty as director of the company and that it had to be implied from the papers that Prince Zulu had not been paid. Unfortunately none of this was raised in the founding affidavit and Prince Zulu did not depose to an affidavit about the loss.
- [3] In my view there is no reasonable possibility that another court will come to a different conclusion.

The order that I make is:

The application for leave to appeal is dismissed with costs.

VICTOR J

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