

SOUTH AFRICA / JUDGMENT

Bowman Gilfillan Inc v Minister of Transport (15806/2016) [2018] ZAGPPHC 474 (24 May 2018)

[2018] ZAGPPHC 474

COURT

North Gauteng High Court, Pretoria

BEFORE

Mokoena

CASE / FILE NUMBER

15806/2016

Source: saflii.org · Research copy typeset by Esheria. Not court-issued or certified.

Source record

IN THE HIGH COURT OF SOUTH AFRICA

GAUTENG DIVISION, PRETORIA

CASE NUMBER: 15806/2016

24/5/2018

In the matter between:

BOWMAN
GILFILLAN
INC
Excipient
and
MINISTER
OF TRANSPORT
Respondent
In

re:

MINISTER
OF TRANSPORT
Plaintiff/Applicant
MANGISI
GEORGE MAHLALELA
First
Defendant/Respondent
BOWMAN
GILFILLAN INC
Second
Defendant/Respondent
NGIDI
& ASSOCIATES
INC

Third
Defendant/Respondent
MORAR
INC
Fourth
Defendant/Respondent

JUDGMENT

(APPLICATION FOR LEAVE TO APPEAL)

MOKOENA AJ,

- [1] On 7 February 2018, I delivered judgment pertaining to the exception which were raised by the second and third respondents.
- [2] The applicant is approaching this court with an application for leave to appeal against the whole judgment and orders made, as per my judgment, dated 7 February 2018.
- [3] In its application for leave to appeal, the applicant appeals both the judgment and orders made in relation to the first category of the exception (i.e. that its particulars of claim lacked averments to sustain a cause of action) and the second category of the exception (i.e. that its particulars of claim are vague and embarrassing.)
- [4] In paragraph 97 of judgment, I concluded as follows:
- "I therefore conclude that the plaintiff's particulars of claim is indeed excipiable premised on the grounds advanced by the second and third defendants."
- [5] Paragraph 97 of the judgment must be read with paragraphs 98 to 98.3, wherein, I concluded as follows:
- "[98] In the circumstances, I make the following order:
- 98.1 the first and second exceptions are upheld;
- 98.2 the plaintiff is granted leave to amend its particulars of claim within ten (10) days of this order;
- 98.3 the plaintiff is ordered to pay the costs of the first and second excipients, including costs of two counsel, where applicable."
- [6] The judgment and orders which I have made have no final effect. Not only was the judgment premised on interlocutory proceedings, but it was not even definitive of the rights of the parties, in particular, those of the applicant.
- [7] The applicant was afforded 10 (ten) days upon which to amend its particulars of claim.

- [8] It was still open to the applicant to amend its particulars of claim in the manner in which its particulars of claim could disclose a cause of action for the relief sought and to address defects pertaining to vagueness of its particulars of claim.
- [9] The applicant chose not to avail itself to an effective procedural step afforded to it by the rules and as per my judgment.
- [10] I am not persuaded that the judgment and orders which I have made, have a final effect.[1]
- [11] As a result, I therefore conclude that my judgment and orders are not appealable.
- [12] In the event that I am wrong, I deal with the merits of the application for leave to appeal, in the following paragraphs. In this judgment, I did not deem it necessary to quote verbatim the applicant's grounds of appeal. I will merely paraphrase the grounds of appeal as ventilated in the applicant's application for leave to appeal, of which, I have read and applied my mind thereto.
- [13] The applicant in its application for leave to appeal as it pertains to the first category of the exception raises five main grounds which are interrelated. In essence, the applicant contends that a declaratory order which it seeks in the pending action proceedings is akin to and has the same object as a public law review remedy under PAJA or legality review under the Constitution.
- [14] The applicant further contends that Rule 53 of the uniform rules of court is not the only procedure by which a legality review under section 172(1)(a) of the Constitution may be achieved.
- [15] Furthermore, the applicant contends that by seeking a declaratory order as opposed to a review application, it does not deprive the defendants of their normal defences which they may raise in review proceedings and as a result, the applicant in these proceedings, was relying on legality review as provided for in the Constitution.
- [16] It is apparent upon perusing the applicant's particulars of claim that the relief it seeks lies in the principles of common law contracts[2] and not the remedy envisaged in section 172 of the Constitution.
- [17] This finding is also corroborated by the oral submissions advanced on behalf of the applicant where it was submitted that the declaratory relief sought by the applicant is discretionary, in nature. Section 172(1)(a) of the Constitution does not afford a court with a discretion where a conduct offends the principle of legality. Such a conduct, must be declared invalid and that is where I part ways with the applicant.
- [18] The averments contained in the applicant's particulars of claim do not disclose a public law remedy. Furthermore, the applicant's particulars of claim do not disclose a case for review as the applicant seeks a private law remedy that the contracts be declared null and void and of no force and effect and basis its claim on an undue enrichment.

[19] In addition, premised on what I have found in paragraphs 54 to 89 of my judgment, I am not persuaded that there are any reasonable prospects of success on appeal.

[20] In relation to the second category of the exception, it is apparent from perusing the applicant's particulars of claim that they are vague and embarrassing as contended for by the first and second respondents.

[21] On the basis of my finding in paragraphs 91 to 97 of my judgment, I am not persuaded that there are any reasonable prospects of success on appeal.

[22] Section 17 of the Superior Courts Act 10 of 2013 ("the Act") governs the application for leave to appeal. Section 17(1)(a) to (c) provides that:

"(1) Leave to appeal may only be given where the judge or judges concerned are of the opinion that -

(a) (i) the appeal would have a reasonable prospect of

success; or

(ii) there is some other compelling reason why the appeal should be heard, including conflicting judgments on the matter under consideration;

(b) the decision sought on appeal does not fall within the ambit of section 16(2)(a); and

(c) where the decision sought to be appealed does not dispose of all the issues in the case, the appeal would lead to a just and prompt resolution of the real issues between the parties."

[23] Having considered the application for leave to appeal, I am not persuaded and I am not satisfied that the applicant has satisfied any of the requirements and/or jurisdictional facts provided for in section 17 of the Act.

[24] In particular and fundamentally, there are no reasonable prospects of success on appeal premised on the reasons and findings which I have already proffered in my judgment with particular reference to paragraphs 54 to 89 and 91 to 97 of my judgment.

[25] In addition, there are no compelling reasons advanced by the applicant as to why the appeal should be heard.

[26] Accordingly, I make the following order:-

26.1 the applicant has failed to satisfy any of the grounds/requirements set out in section 17 read with section 18(2) of the Superior Courts Act 10 of 2013;

26.2 there are no reasonable prospects of success on appeal;

26.3 the applicant's application for leave to appeal is dismissed;

26.4 the applicant is ordered to pay the costs of this application for leave to appeal.

MOKOENA AJ

ACTING JUDGE OF THE HIGH COURT

Appearances :

For the applicant/plaintiff: Adv

JH Dreyer SC

Adv DT Skosana SC

Adv T Lupuwana

Instructed by:

State Attorney, Pretoria

For the second respondent/defendant: Adv KD Iles

Instructed by:

Norton Rose Fullbright

For the third respondent/defendant: Adv K Potgieter

Instructed by:

Couzyn Hertzog & Horak Inc

[1] Section 20 of the old Supreme Court Act, No. 59 of 1959; *Zweni v Minister of Law and Order of the Republic of SA* 1993 (1) SA 523 (A) at 5231 - 5338; see also the current Superior Courts Act, No. 10 of 2013, sections 16, 17 and 18(2) “the judgment and order has no final effect”.

[2] The applicant seeks a declaratory order to the effect that the appointments and contracts concluded between the applicant and the second to fourth respondents are null and void and of no force and effect. In addition, the applicant further claims from the respondents specified amounts which were paid to the second, third and fourth respondents on the basis of the alleged invalid

contracts.

Source & reproduction note

Judgment wording, source notices and original paragraph numbers are retained. Esheria supplies the layout and this PDF's page numbers; these are not the source pagination. This is a research copy, not an official or certified court document. Check quotations, citations and publication restrictions against the original source before relying on it.

ORIGINAL SOURCE <https://www.saflii.org/za/cases/ZAGPPHC/2018/474.html>

CASE PAGE <https://chat.esheria.ai/case-law/south-africa/bowman-gilfillan-inc-v-minister-unknown-topic-agpphc-2018>

Prepared on 13 October 2026 · Esheria