

SOUTH AFRICA / JUDGMENT

Central University of Technology V Lindsay Saker (Pty) Ltd, A division of Imperial Holdings (A125/2019) [2020] ZAFSHC 31 (25 February 2020) [2020] ZAFSHC 31

COURT

Free State High Court, Bloemfontein

BEFORE

Reinders, Mhlambi

CASE / FILE NUMBER

A125/2019

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

Source record

IN

THE HIGH COURT OF SOUTH AFRICA,

FREE

STATE DIVISION, BLOEMFONTEIN

Case

number: A125/2019

In

the matter between:

CENTRAL
UNIVERSITY OF TECHNOLOGY
Appellant
and
LINDSAY
SAKER (PTY) LTD, A DIVISION
OF
IMPERIAL HOLDINGS
(REGISTRATION

NUMBER:

1983/009088/07)
Respondent

CORAM:

REINDERS,
J et
MHLAMBI,J
HEARD
ON: 4
DECEMBER 2019

JUDGMENT

BY REINDERS, J

DELIVERED ON: 25 FEBRUARY 2020

- [1] The appellant was cited in the Magistrate's Court of Bloemfontein as defendant. In order to avoid confusion I refer to the parties as in the trial court.
- [2] During 2012 the plaintiff issued a summons based on an alleged sponsorship agreement in terms whereof plaintiff allegedly agreed to pay defendant a sponsorship amount of R80 000,00 (excluding value added tax) per annum wherefore in return defendant would allow plaintiff as sole sponsor for the naming rights of Tokkie Park Sports Grounds which would be renamed as the Lindsay Saker CUT Stadion. Amongst others defendant allegedly granted plaintiff the right to display advertising boards and its logo. Plaintiff avers that it installed advertising signage to the value of R 77 611-20. However, defendant removed "some" of the signage and has failed to re-erect the signage on plaintiff's demand. The summons therefore seeks payment of the mentioned amount together with interest and costs.
- [3] Defendant filed a plea in essence denying any valid agreement, averring that it was an explicit term that any agreement entered into had to be in writing and approved by council or the chancellor or vice-chancellor of the defendant and that such agreement was not only to be in writing but signed by the defendant.
- [4] Under the same case number and on 31 August 2018 plaintiff issued a notice of motion. The affidavit attached thereto refers to the history of the matter and concludes by averring that the parties have entered into a settlement agreement. The affidavit further states that the purpose of the application is to have the settlement agreement made an order of court in terms of Rule 27(6)(a) of the rules regulating the conduct of proceedings in the magistrates court (the rule/s). The notice of motion seeks the following relief:

"1. The settlement agreement attached to the Applicant's Founding Affidavit as Annexure "D11" is made an Order of Court in terms of Rule 27(6)(a);

2. The Respondent is compelled to deliver the Applicant's signage boards to the Applicant within 10 (TEN) days hereof;
 3. Failing compliance with prayer No. 2 mentioned above, that the applicant will be entitled to approach the abovementioned Honourable Court for Order for damages of the replacement of its signage board, duly supplemented with further documentation where necessary;
 4. That the Respondent be ordered to pay the costs of the Application;
 5. Further and/or alternative relief."
- [5] The more relevant part of the settlement agreement relied upon by plaintiff reads as follows:

“1.

That the Plaintiff will be allowed to remove all the signage and take same in possession within 10 (ten) working days from signing of this agreement.

2.

That the Plaintiff will withdraw their action against the Defendant and that each party will pay their own costs in respect of the action.

3.

3.1 This agreement contains all the terms and conditions of the agreement between the parties.

3.2 No party will have any further claim against the other in respect of this matter.

3.3 No variation of or abandonment or waiver of rights or obligations, whether express or implied, shall be binding unless contained in this agreement, or subsequently reduced to writing and signed by both parties.

3.4 No indulgence or extension given by either party shall be construed to be a waiver or novation of such party's rights and at all times shall be without prejudice to such party's rights.”

[6] The defendant opposed the application. In an answering affidavit by its deputy vice chancellor defendant avers that it is not in a position to return all of the signage boards and has tendered to pay for the missing boards. The plaintiff in a replying affidavit admits not having accepted payment tendered for the eighteen missing boards, ostensibly as there was no tender for legal costs and avers that the plaintiff is well within its rights “to launch the application” to compel compliance with the signed settlement agreement. At the hearing of the matter it was common cause that the main action was still pending and had not been withdrawn. The application was heard according to the record on the 30th November 2018, and on 28th June 2019 the learned magistrate dismissed the defendant's objections and made the following orders:

“

- Judgment is granted in favour of the applicant with costs
- The respondent is directed to return forthwith eighteen (18) signage boards to the Applicant, within 10 (ten) days of this order, failing compliance therewith, the Respondent is ordered to pay an amount of R 77, 611.20 to the Applicant as prayed.”

[7] It is against these orders that defendant appeals. The notice of appeal complains that the relief sought by plaintiff was not competent under Rule 27(6)(a); that the court at best could only have recorded the terms of the settlement and was barred from granting judgment; the court could not order payment of the

R 77 611.20 on failure of the appellant to return the signage boards as the agreement did not make provision for such an order. The notice of appeal averred that the magistrate erred by allowing plaintiff to move for judgment whilst, contrary to the settlement

agreement, it has not withdrawn its action, and the appellant to the knowledge of all was no longer in possession of the signage making it impossible for appellant to comply.

[8] Rule 27(6)-(10) reads as follows:

“(6)(a) Application may be made to the court by any party at any time before judgment to record the terms of any settlement agreed to by the parties to a proceeding without entry of judgment: Provided that if the terms of settlement so provide, the court may make such settlement an order of court.

(b) ...

(7) ...

(8)...

(9)(a) When the terms of a settlement agreement which was recorded in terms of subrule (6) provide for the future fulfilment by any party of stated conditions and such conditions have not been complied with by the party concerned, the other party may at any time on notice to all interested parties apply for the entry of judgment in terms of the settlement.

(b) An application referred to in this subrule shall be on notice to the party alleged to be in default, setting forth particulars of the breach by the respondent of the terms of settlement.

(10) After hearing the parties to an application referred to in subrule

(9) the court may –

(a) dismiss the application;

(b) give judgment judgment for the applicant as specified in terms of the settlement;

(c) set aside the settlement and give such directions for the further prosecution of the action as it may deem fit; or

(d) make such order as it may deem fit as to the costs of the application.”

[9] A magistrate’s court is a creature of statute and it is well- established that a magistrate has no jurisdiction or powers beyond those that are granted by the act .

See: Ndamase v Functions 4 All 2004 (5) SA 602 (SCA) at para [5]

[10] Mr Snyman appearing for appellant contended that the relief sought (and the relief granted) was barred by the provisions of Rule 27(6)(a) as the settlement agreement relied upon does not include a term permitting the settlement being made an order of court by agreement.

He referred us to the work of Jones and Buckle – The Civil Practice of the Magistrates Courts in South Africa (10th edition) which states at Rule 27-5 that “...The terms of the settlement are recorded by court without entry of judgment, except if the terms of the settlement provide that the court may make the settlement an order of court, in which event the court may do so.”

- [11] Mr Benade appearing for the respondent did not contend that the agreement provides that it be made an order of court. He submitted that the court did not make the settlement agreement an order of court and did not grant paragraph 1, namely that the plaintiff be allowed to remove the signage. He submitted that the second prayer was granted ordering defendant to return the eighteen signage boards within ten days of the order, failure whereof defendant should pay an amount of R 77 611.20. It was submitted that defendant in correspondence in any event tendered to pay the aforesaid amount.
- [12] In my view the rule makes provision that any party before judgment can request the court to record the terms of any settlement agreement by the parties without entry of judgment. Where the terms of the settlement agreement so provide, the court may make such settlement an order of court. Put differently, absent a term permitting the magistrate to make a settlement an order of court, the court may not do so. If the terms of a settlement agreement (recorded in terms of subrule (6)) provide for future fulfilment and such conditions or terms have not been complied with, the other party may apply for entry of judgment in terms of the settlement. At the hearing of such an application a court may then dismiss the application, give judgment as specified in the terms of settlement, set aside the settlement and give directions for the further prosecution of the action as it may deem fit together with an appropriate cost order.
- [13] When the application was heard the main action was clearly not settled. On the contrary, the summons was still alive when the magistrate heard the matter. No orders were sought in terms of the summons and the defendant's plea was not withdrawn. The plaintiff did not obtain any of the relief in terms of the summons. It approached court in terms of the provisions of Rule 27(6)(a) based on a written agreement between the parties. That agreement did not make provision that the agreement be made an order of court nor did defendant consent to judgment of the amount as granted by the magistrate. It was plaintiff who applied to court and it was only entitled to ask court to record the terms of the agreement between the parties. On failure by defendant to comply with those terms, the plaintiff was entitled to approach court for judgment in the prescribed manner in terms of the written agreement. It is only then that the magistrate can make orders in terms of Rule 27(10) which may include dismissal of the application, judgment or such direction as the court deems fit. None of the aforesaid happened and the magistrate was wrong therefore in granting the orders as she did. The notice of motion by the applicant was ill born in that it never sought from the magistrate to record the terms of the agreement as the rule provides. Mr Benade's argument that defendant in correspondence tendered to pay the amount of R 77 611.20 did not take the matter further. This is so because no such an agreement has been reached in terms of the settlement agreement and applicant in replying papers rejected the

offer.

[14] Mr Snyman contends in his heads of arguments and in oral submissions before us that a point was taken in limine to the effect that the court at that stage could only record the terms of the agreement, however the point was dismissed by the magistrate on 30 November

2018. The record reflects that the transcript of the hearing of the matter on 30 November 2018 was excluded from the appeal record. There is accordingly no record of dismissal of a point in limine nor is it reflected in the reasons of the magistrate. This however does not detract from the fact that the magistrate as a creature of statute had to follow the provisions of the rule and in any event for the aforesaid reasons was not entitled to grant judgment as she did. The order that was made recorded that judgment is granted in favour of the plaintiff. This on my interpretation of the rule was impermissible.

[15] Where the plaintiff therefore sought in its notice of motion that the settlement agreement be made an order of court, it was not entitled to do so absent such an agreement by the parties. Not only was there no such an agreement but defendant opposed the granting of such an order. In passing it is worth mentioning that plaintiff, in the event of defendant failing to deliver the signage boards, requested the court's leave to approach court for damages on papers duly supplemented. The plaintiff itself was not of the view that it was entitled to a quantified amount absent further evidence. The magistrate ordered defendant absent compliance with the order, to pay a quantified amount of R 77 611.20.

[16] It follows that I would allow the appeal and I find no reason why costs should not follow the event. For sake of clarity I mention that the pleadings in the main action is still very much alive and could be proceeded with should plaintiff so elect, provided it had not been disposed of in any other manner in the meantime.

[17] The following orders will therefore issue:

1. The appeal succeeds with costs.
2. The order of the magistrate dated 28 June 2019 is set aside and substituted with the following:

"The application is dismissed with costs."

C REINDERS, J

I concur

J MHLAMBI, J

On behalf of Appellant : Adv C Snyman

Instructed by

: Phatshoane Henney Attorneys

BLOEMFONTEIN

On behalf of Respondent : Adv H Benade

Instructed by

: Symington & De Kok Attorneys

BLOEMFONTEIN

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/ZAFSHC/2020/31.html>

CASE PAGE <https://chat.esheria.ai/case-law/south-africa/central-university-of-technology-v-lindsay-unknown-topic-afshc-2020>

Prepared on 11 October 2026 · Esheria