
SOUTH AFRICA / JUDGMENT

De Jager NO and Others v Thompson and Another (2122/2013) [2014] ZAECPEHC 69 (14 October 2014) [2014] ZAECPEHC 69

COURT

Eastern Cape High Court, Port Elizabeth

BEFORE

P.W. Tshiki

CASE / FILE NUMBER

2122/2013

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IN THE HIGH COURT OF SOUTH AFRICA

EASTERN CAPE LOCAL DIVISION, PORT ELIZABETH

Case no: 2122/2013

Date heard: 14.8.2014

Reasons

made available: 14.10.2014

In the matter between:

WERNER DE JAGER N.O

First

Applicant

ESME DORFLING N.O

Second Applicant

AMORE ADAMS N.O

Third Applicant

vs

ROYDEN EDWARD MINTO THOMPSON

First

Respondent

JEANETTE THOMPSON

Second Respondent

REASONS

FOR JUDGMENT

TSHIKI J:

[1] On the 14th August 2013 this Court, per Mjali J, issued an order as follows:

[1.1] that the respondents' application for the postponement of their case was refused and that they were ordered to pay costs on the scale as between attorney and client;

[1.2] that the provisional order of their sequestration be made final with costs in the sequestration.

[2] On the 13th February 2014 as well as on the 3rd April 2014 the application by the respondents for leave to appeal was dismissed with costs, the application for the final sequestration of the respondents having been granted on the 14th February

2013. An application by the respondents to have the matter postponed pending appeal was refused. The grounds of such refusal as contained in the judgment of Eksteen J's judgment on the same or related issues appear on p 7 of the judgment which follows:

"[14] As noted earlier the respondents herein have at the eleventh hour submitted an application for leave to appeal against the sequestration order of the Trust and to seek condonation for the late filing thereof. On this basis it seeks a postponement of the eviction proceedings 'pending the outcome of an appeal ... presently 'pending at the Supreme Court of Appeal'.

[16] The application for leave to appeal in the High Court was finally dismissed on the 3rd April 2014. Section 17 (2)(b) of the Superior Courts Act, 10 of 2013 provides that where leave to appeal has been refused an applicant may be granted leave by the Supreme Court of Appeal "on

application filed with the registrar of that Court within one month after such refusal, or such longer period as may on good cause be allowed ..." Supreme Court of Appeal Rule (6) provides:

"In every matter where leave to appeal is by law required of the Court an application thereof shall be lodged in triplicate with the registrar within the time limits prescribed by that law."

- [18] As recorded earlier, I think it would be inappropriate to speculate on the prospects that the Supreme Court of Appeal will condone the late filing of an application for leave to appeal. As at the date of hearing of this matter, however, condonation had not been granted and the appeal has lapsed. It is for this reason that I have recorded earlier that there is no appeal pending.
- [19] Section 150 (3) of the Insolvency Act, 24 of 1936 provides:
- “When an appeal has been noted ... against a final order of sequestration, the provisions of this Act shall nevertheless apply as if no appeal had been noted: Provided that no property belonging to the sequestrated estate shall be realized without the written consent of the insolvent concerned.”*
- [3] It follows therefore that even in this case where an appeal is noted against the final sequestration order, the sequestration follows its normal course and relevant provisions of the Insolvency Act apply as if no appeal has been noted, provided however that the trustees may not realise the assets in the estate without the consent of the insolvent.
- [4] As already stated in paragraph 23 of the judgment by Eksteen J, para
- [23] with which I agree, the provisions of the PIE Act find no application in the present case.
- [5] Given the background as evinced from the judgments of Eksteen and Mjali JJ which form part of the record in these proceedings it is not for the first time that the applicants have applied for a postponement of these proceedings in this case. On both occasions they have asked for indulgence and the main reasons being to have the effect of allowing the respondents to continue to remain in the applicants’ premises to the prejudice of the applicants. This, in my view, cannot be countenanced.
- [6] To show that the respondents have no regard for the interests of the applicants and are also not serious to have the matter come to a finality, their papers for the application for postponement were only filed with the registrar on the date on which the application for postponement was to be made. There was also no decency for the applicant’s attorney to alert the Court about the papers that the Court had not yet seen let alone reading them.
- [7] The defences raised by respondents herein have no merit. They raise lack of locus standi on the part of the applicants. Secondly, that the final sequestration of the Trust being taken on appeal. Thirdly, that the Trust has applied for rescission of the default judgment which gives rise to its sequestration. All the above defences are not new and have in fact been addressed at length by Eksteen J in his judgment quoted supra. In the present case there is no application to apply for leave to appeal in the Supreme Court of Appeal in terms of section 17 (2)(b) of the Rules of that Court.
- [8] In the circumstances of this case, I could not have been doing justice to the applicants if I grant the applicants’ request

for postponement. It was dismally lacking merit in the extreme and in fact it is nothing else but a deliberate delaying tactic which should be discouraged by an appropriate order of costs.

P.W. TSHIKI

JUDGE OF THE HIGH COURT

For the applicant : Adv P.W.A Scot SC

Instructed by

: BLC Attorneys

PORT ELIZABETH

(Ref: Mr LT Schoeman/wjd)

For the respondent : Ms Carruthers

Instructed by

: Carruthers Attorneys

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