

SOUTH AFRICA / JUDGMENT

Du Toit and Another v Lee and Others (6331/2022) [2024]

ZAFSHC 396 (19 December 2024)

[2024] ZAFSHC 396

COURT

Free State High Court, Bloemfontein

BEFORE

Van Zyl

CASE / FILE NUMBER

6331/2022

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IN

THE HIGH COURT OF SOUTH AFRICA

FREE

STATE DIVISION, BLOEMFONTEIN

Reportable:

YES/NO

Of

interest to other Judges: YES/NO

Circulate

to Magistrates:

YES/NO

Case

no: 6331/2022

In

the matter between:

JAN

JACOB STEPHANUS DU TOIT

First

Applicant

HELENA

JOHANNA DU TOIT

Second

Applicant

and

JACOBUS

PETRUS LEE

First

Respondent

JAKKALSFONTEIN

VOERKRALE (PTY) LTD
Second
Respondent
GERRIT
DU PLOOY
Third
Respondent
J
AND G HUIDE EN VELLE (PTY) LTD
Fourth
Respondent
MEMBER
OF THE EXECUTIVE COUNCIL, FREE STATE
DEPARTMENT
OF ECONOMIC, SMALL BUSINESS
DEVELOPMENT,
TOURISM AND ENVIRONMENTAL
AFFAIRS
Fifth
Respondent
THE
MINISTER OF WATER AND SANITATION
Sixth
Respondent
In

Re:

JAN
JACOB STEPHANUS DU TOIT
First
Applicant
HELENA
JOHANNA DU TOIT
Second
Applicant
and
JACOBUS
PETRUS LEE
First
Respondent
JAKKALSFONTEIN
VOERKRALE (PTY) LTD
Second
Respondent
GERRIT
DU PLOOY
Third
Respondent
J
AND G HUIDE EN VELLE (PTY) LTD
Fourth
Respondent

MEMBER
OF THE EXECUTIVE COUNCIL, FREE STATE
DEPARTMENT
OF ECONOMIC, SMALL BUSINESS
DEVELOPMENT,
TOURISM AND ENVIRONMENTAL
AFFAIRS
Fifth
Respondent
THE
MINISTER OF WATER AND SANITATION
Sixth
Respondent

Coram: Van Zyl, J

Heard: 20 June 2024

Delivered: 19 December 2024

Summary: Filing
by the applicants of an interlocutory application to adduce further
evidence – suspends the handing down of the judgment
on the
merits of the main application, without dealing with or deciding the
merits of the interlocutory application – the
merits of the
interlocutory application is to be determined during the adjudication
thereof in due course.

ORDER

1.

The handing down of the judgment on the merits of the main
application is suspended pending the adjudication
of the applicants'
interlocutory application to adduce further evidence.

2. The

parties are ordered to postpone the date of the hearing of the
interlocutory application to a date to be determined between
the
parties, but which date is to be within the Court term and is to be
arranged in conjunction with the Registrar of Van Zyl,
J.

JUDGMENT

Van Zyl, J

[1] In the litigation between the present parties more than one application has served before Court to date. For purposes of this judgment, the application issued by the applicants on 19 March 2024 will be referred to as the main application. In terms of the main application the applicants are seeking the following relief:

‘1. That the Court grants an order in terms of which paragraphs two (2) and three (3) of the interim order granted by this Court under civil case number 6331/2023 on 4 January 2024 be deleted.

2. That the First, Second, Third and Fourth Respondents be ordered to pay the costs of this application on an attorney and client scale, such costs to include the costs occasioned by two counsel.’

[2] The main application served before me on 19 June 2024 and judgment was reserved. Since the hearing of the main application three sets of documents have been filed by or on behalf of the fifth and/or the sixth respondents, filed on 18 October 2024, 21 October 2024 and 23 October 2024 respectively. The filing of the said documents emanates from previous orders made against the fifth and sixth respondents, the detail of which is not relevant for purposes of this judgment.

[3] I was contemplating on handing down the judgment on the merits of the main application during the week ending 20 December 2024. However, on 11 December 2024 the applicants filed an interlocutory application to adduce further evidence in the main application and ancillary relief in relation to costs. Due to administrative reasons on the side of the General Office at Court, the said application was only handed to me on Tuesday, 17 December 2024.

[4] Without considering the merits of the interlocutory application, it follows that I cannot hand down the judgment on the merits of the main application without first having adjudicated the interlocutory application. The handing down of the judgment on the merits of the main application is consequently to be suspended pending the adjudication of the interlocutory application.

[5] In the Notice of Motion filed in the interlocutory application the applicants indicated that they intend applying for an order in terms thereof on 16 January 2025. However, 16 January 2025 falls within Court recess and on the presumption that the interlocutory application will be opposed, it will consequently not be possible to entertain the application during Court recess. The parties will therefore have to postpone the interlocutory application on 16 January 2025 to a date within the Court term, which date is to be arranged between the parties. Since I am seized with this matter, the parties will have to ensure, considering my other Court obligations, that I will be available on the said date. The parties’ arrangement of a suitable date will therefore also have to be done in conjunction with my Registrar.

[6] I consequently make the following order:

1. The handing down of the judgment on the merits of the main application is suspended pending the adjudication of the applicants' interlocutory application to adduce further evidence.
2. The parties are ordered to postpone the date of the hearing of the interlocutory application to a date to be determined between the parties, but which date is to be within the Court term and is to be arranged in conjunction with the Registrar of Van Zyl, J.

C. VAN ZYL, J

On behalf of Applicants: Adv N Snellenburg SC Assisted by: Adv R van der Merwe Instructed by: Honey Attorneys BLOEMFONTEIN Ref: CH du Plessis/lm/I33703 E-mail: casper@honeyinc.co.za jacobs@honeyinc.co.za lvoigt@honeyinc.co.za On behalf of First – Fourth Respondents: Adv P Lazarus SC Assisted by: Adv DE Hugo Instructed by: Christo Reeders Attorneys c/o Webbers Attorneys BLOEMFONTEIN Ref: M Koller/nd/CHR28/0006 E-mail: mp@webberslaw.com hcr@crattorneys.co.za

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Prepared on 9 October 2026 · Esheria