

SOUTH AFRICA / JUDGMENT

Hassam NO and Others v Moosa and Others (33657/2010) [2012] ZAGPPHC 311 (30 November 2012)

[2012] ZAGPPHC 311

COURT

North Gauteng High Court, Pretoria

BEFORE

Phatudi

CASE / FILE NUMBER

33657/2010

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NORTH

GAUTENG HIGH COURT,

PRETORIA

REPUBLIC OF SOUTH AFRICA

Case

No: 33657/2010

Date

heard: 19/11/2012

Date

of judgment: 30/11/2012

In

the matter between:

SIKANDER

AMOD HASSAM

NO.....1st

Plaintiff

MUNEERA

HASSAM

NO2nd

Plaintiff

MAHOMED

RAFIK OSMAN SIDDIE AKOO

NO.....3rd

Plaintiff

ABDOOL

KADER MOOSA
 NO.....4th
 Plaintiff
 FAYYAZ
 MOOSA
 NO.....5th
 Plaintiff
 ASIF
 MOOSA
 NO.....6th
 Plaintiff
 And
 SHAUKAT
 ALLI
 MOOSA.....1st
 Defendant
 OSMAN
 ABDUL LATIFF
 DADA.....2nd
 Defendant
 RANAVA
 INVESTMENTS (PTY)
 LTD.....3rd
 Defendant

JUDGMENT

PHATUDI J:

[1] The plaintiffs instituted this action in their capacities as trustees of Sikander Amod Hassam Family Trust IT5929/1982 PMB (Sikander Trust) and Abdool Kader Moosa Family Trust IT5933/1982 PMG (Moosa Family Trust).¹

[2] At the commencement of trial, the plaintiffs' counsel² submits in his opening address that the first, second and third plaintiffs, being the trustees of Sikander Trust and the first

defendant have settled their disputes. This resulted in the first, second and third plaintiffs withdrawing their claim in this action. He further places on record that he represents the fourth, fifth, sixth and seventh plaintiffs, who are trustees of Moosa Family Trust and who are pursuing their claim in this action.

[3] The first defendant's counsel³ applies that the special plea on jurisdiction be heard and determined first. He only holds instruction thereto. He applies that the issue be separated in terms of Rule 33(4) of the Uniform Rules of this court. I ordered separation of the jurisdiction issue from the main application as envisaged in terms of Rule 33(4). I further ordered that the main application stands to be postponed sine die should the special plea be dismissed.

- [4] I expressed my concern in the manner in which these proceedings are conducted. It appears to me that the parties did not hold a proper pre-trial conference. The plaintiffs' counsel kept on asking the defendants questions that ought to have been dealt with at the pre trial conference. I even challenged the parties to address me thereto. The plaintiffs' counsel informs me that the defence team present before court is not the ones with whom they held the pre-trial.
- [5] Mahomed Rafik Osman Sidd Akoo (Mr Akoo), the third plaintiff, who withdrew the action against the defendant, testifies that the third defendant's auditors are SAB & T whose offices are in Polokwane. He testifies that the first defendant is a nominee shareholder of both Sikander Trust and Moosa Family Trust.
- [6] Abdool Kader Moosa (Mr Moosa) testifies that he is the fourth plaintiff. The fifth, sixth and seventh plaintiffs are his sons. He states that the Moosa Family Trust is registered in Pietermaritzburg. He concedes under cross-examination that the prayer sought by the plaintiff does not deal with the transfer of the immovable property owned by the third defendant. He further concedes that the 1st defendant lives and resides in Pietermaritzburg.
- [7] The first defendant's counsel submits that this court has no jurisdiction to hear this action because the first defendant resides

in Pietermaritzburg. He further submits that the share agreement was concluded by the parties in Pietermaritzburg. He submits that the third defendant has been added to the proceedings only as an interested party. No real relief is sought against the third defendant save to record the true state of affairs in its share register should the outcome of this case favour the plaintiffs.

- [8] He further submits that the claim as sought can be granted by the Kwa Zulu Natal High Court. The order can be enforced on the third respondent irrespective of its jurisdictional location. He states that the transfer of shares be equated with transfer of movables. He states that a share certificate has a situs of where it is found. He states further that the first defendant, as the nominee shareholder, is regarded as the holder of shares and an agent for the Moosa Family Trust. He submits that the first defendant resides in Pietermaritzburg and holds shares in Pietermaritzburg. He lastly submits that the plaintiff failed to prove the location of the shares and thus failed to prove jurisdiction. None of the witnesses who testified led evidence on the location of the shares. This court cannot assume on the location of the shares.
- [9] In rebuttal, plaintiff counsel concedes to a number of submissions made on behalf of the defendant but for section 115 of the Companies Act, Act 61 of 1973, which provides that the 'court may rectify the share register of the company if the name of any person is, without sufficient cause, entered in or omitted from the register of members of a company.
- [10] He submits that notwithstanding non production of the share register, it is assumed that it exist and must be presumed to be in Polokwane, probably in possession of the auditors SAB & T.

[11] He further submits that this court has jurisdiction and refers me to *Els v Weideman and Others* 2011 (2) SA 126 SCA where he submits the court held that ‘the court a quo’s finding that it lacked jurisdiction was wrong’

[12] In my evaluation of the evidence tendered and submissions made, I first considered *Els* case, where the South Gauteng High Court (SGHC) granted *Els* an interdict prohibiting *Huisgenoot* and *You* magazines (edited by Ms Weideman) from publishing an article identifying *Els* (a singer and well-known personality in South African entertaining world) as a sex abuser. *Els* instituted contempt of court proceedings in Western Cape High Court (WCC). The application in WCC was dismissed on the ground that the WCC lacked jurisdiction to entertain an application in relation to the alleged contempt. The SCA held that the court a quo’s finding that it lacked jurisdiction in respect of the contempt issue was wrong.

[13] In this case, the applicants do not seek enforcement of any court order. The applicants seek ‘[a] declaratory order that the Abdool Kader Moosa Family Trust IT5933/82 PMB is the owner of one share of the issued share capital and 10% of the loan account

registered in the name of the first defendant and the third defendant. That the first defendant be directed to transfer one share

and 10% of the loan account which is registered in his name in the third defendant into the name of Abdool Kader Moosa Family Trust. The third defendant is directed to record the true state of affairs in terms of paragraph 4 and 5 above.’⁴ It is clear that the principle set out in *Els* case is not applicable in this case.

[14] It is common cause that the provisions of section 19(1) (a) of the Supreme Court Act, Act 59 of 1959 do not favour the plaintiffs.

Section 19(1)(b), provides that ‘[a] provincial or local division shall also have jurisdiction over any person residing or

being outside its area of jurisdiction who is joined as a party to any cause in relation to which such provincial or local division has jurisdiction of any other provincial or local division...’

[15] Plaintiff’s counsel relies on *Mossgas (PTY) Ltd v Eskom and Another* 1995 (3) SA 156 (W) in his submission that section 19(1) (b) extends the jurisdiction of the court in regard to persons outside the ordinary jurisdiction. He further submits that once the High Court has jurisdiction in an action or proceeding, the sub section can be invoked to join in that cause a defendant not resident within the area of jurisdiction of that court.

[16] Contrary thereto, the defendant’s counsel submits that it could never have been in the contemplation of the legislator to empower a court to have jurisdiction in terms of section 19(1) (b) over a main defendant who is not resident within its jurisdiction by virtue of the consequential joinder of parties against whom no real relief is sought.

- [17] I am persuaded to accept that in this case, the main party (first defendant) against whom the substantial portion of the relief is sought, is not residing within the jurisdiction of this court. This court, in my view, cannot find jurisdiction by virtue of the third defendant against whom no relief is sought. All that is sought against the third defendant is to record the true state of affairs' as the court with jurisdiction may order. There is no evidence led of the location of the shares. I am reluctant to presume that the shares are in possession of the auditors in Polokwane. I am further reluctant to assume that the share register exist. This brings me to the conclusion that the special plea stands to be upheld.
- [18] It is trite that costs follow the event. The first defendant succeeds with his special plea and is entitled to his costs. There are no submissions in relation to costs of two counsel.

I, in the result, make the following order:

1. The special plea is upheld.
2. This matter is struck off the roll for lack of jurisdiction with costs.

A.M.L. PHATUDI

JUDGE OF THE HIGH COURT

On behalf of the plaintiffs: Abbas Latib & Company

C/O Asger Gani Attorneys Suite 805, 8th Floor Byron Place

Cnr Schubart & Skinner Streets Pretoria

Adv. N.Z. Cassim SC Adv. D Ramdhani

On Behalf of the Defendants: Lockhat & Associates

C/O Macrobbert Inc

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Pretoria

Adv. A Politis Ms Moodley

1Page 8 and 9 Pleadings bundle - Particulars of claim Adv NZ

2Cassim SC assisted by Adv D Ramdhani. Adv A Politis. duly

3 Adv A Politis. duly assisted by Ms Moodley.

4Particulars of Claim page 15 - prayers 4, 5 and 6.

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Prepared on 10 October 2026 · Esheria