

SOUTH AFRICA / JUDGMENT

HL Matlala Properties CC and Another v SA Secularization Programme (Pty) Limited and Another (80902/2017) [2020] ZAGPPHC 189 (3 March 2020)

[2020] ZAGPPHC 189

COURT

North Gauteng High Court, Pretoria

BEFORE

JG Rautenbach

CASE / FILE NUMBER

80902/2017

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IN

THE HIGH COURT OF SOUTH AFRICA

(GAUTENG

DIVISION, PRETORIA)

(1)

REPORTABLE:

NO

(2)

OF

INTEREST TO OTHER JUDGES: NO

(3)

REVISED:

CASE

NO: 80902/2017

3/3/2020

In

the matter between:

H
L MATLALA PROPERTIES CC &
ANOTHER
First Applicant
HOSEA
LAYTON MATLALA
Second Applicant
and
SA
SECURITIZATION PROGRAMME (PTY)
LIMITED
First Respondent
SASFIN
BANK LIMITED
Second
Respondent
SUNLYN
(PTY) LIMITED
Third
Respondent

JUDGMENT

IN THE APPLICATION FOR LEAVE TO APPEAL

Rautenbach AJ

1. This is an application for leave to appeal against the granting of summary judgment on certain of the claims that were instituted by the First, Second and Third Respondents.
2. This matter has a rather unfortunate history and I am not in a position to answer specifically the delays caused in the matter. Firstly, I was only informed at a very late stage of the fact that there was an application for leave to appeal in the matter.
3. When the matter came to my attention months, (almost a year) after the actual Judgment was given, I was presented with a Judgment that was probably typed by the typists or transcribers at Court.
4. What was also curious about the Judgment is that it bears a stamp in terms of which it was revised by Pretorius J, the then Acting Deputy Judge President on what appears to be the 20 August 2018 whereas the Judgment seems to be dated the 23rd February 2018.
5. When the matter eventually came before me I noticed for the first time that I never revised the Judgment and that it was never presented to me to revise it. The Judgment are riddled with mistakes both as far as grammar is concerned as well as references to authorities and the proper citation thereof. I refused to deal with the matter at that stage but requested for the discs to be obtained so that I could listen to the Judgment on the discs. There was not much to be done about the Judgment as it was already revised and made available to the

parties as a Judgment. I have no idea why the Judgment was given to the parties before I had the opportunity to revise it. Reading the Judgment now without the benefit at the time to revise it properly as I normally do with any Judgment that I give, I am embarrassed to say the least. In the circumstances however there is nothing that can be done at this late stage and I will proceed with the Application for Leave to Appeal.

6. I will refer to the parties in the matter as they were referred to in the original application for summary judgment. The application for summary judgment was brought in terms of Claims A, B, C, D and E. Summary judgment was granted in terms of Claims A to E but not in respect of the Guarantees by the Second Respondent.
7. The first point in support of the argument raised by the Respondents was that there was no proper verification of the causes of action that the Applicants relied upon.
8. As far as the Respondents are concerned, the first point that was raised was that there was no proper verification of the causes of action on which the Applicants (more specifically First Applicant) relied upon. In the Affidavit deposed to in support of the Summary Judgment, the following is stated on page 5:

"I am the alleviation Manager of the Plaintiffs/ Applicants and I am duly authorised to represent the Plaintiffs/ Applicants in these proceedings and to depose to this Affidavit on behalf of the Plaintiffs/ Applicants. Due to my position aforesaid, I have all the files in the Legal Department of the Plaintiffs/ Applicants under my control and I have access to all such files, including that of the First and the Second Defendants/Respondents. I have perused the file of the First and Second Defendants/Respondents and the facts herein contained are within my personal knowledge and I am able to swear positively thereto. The First and Second Defendants/Respondents are indebted to the First Plaintiff/ Applicant in the sum of R....." (Amounts are as per Summons).

9. Because of the fact that the Judgment was not revised the quote read "... alleviation Manager" instead of Litigation Manager.
10. As far as Claim A, B, C, D and E are concerned the following was stated on behalf of the Applicants:

"I verify the cause of action as set out in the Particulars of Claim and I furthermore verify the amounts."

11. I referred in the main Judgment to First Rand Bank Limited v. Huganel 2012 (3) SA 16 (WCC) where it was noted by Davis J that the nature of the defence become the starting point when one deals with the verification.

(Because of the fact that the Judgment was not revised, the citation is wrong and should read "First Rand Bank Limited v. Huganel 2012 (3) SA 167 (WCC)".

12. As I have stated in the main Judgment, I am satisfied that there was no indication on the papers upsetting the personal made to the Applicants.

16. As far as Claims A, B, C, D and E are concerned, I am of the view that most importantly because no defence whatsoever is disclosed that summary judgment had to be granted against the First Respondent.
17. As far as the Guarantee is concerned, I however found that there was no proper verification of the Guarantee as such in the Affidavit concerning Summary Judgment based on the Guarantee. In those circumstances the Second Respondent was given leave to defend and those costs will be costs In the cause.
18. I am of the view that there are no prospects of success as far as any appeal is concerned insofar as Claims A, B, C, D and E in respect of the First Applicant are concerned. The Application for Leave to Appeal is accordingly dismissed with costs.

JG Rautenbach AJ

Acting Judge of the High Court

Gauteng Division

Pretoria

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