

SOUTH AFRICA / JUDGMENT

Hlangane v Bambatha and Others (1098/2021) [2022] ZAECHGC 5 (18 January 2022) [2022] ZAECHGC 5

COURT

Eastern Cape High Court, Grahamstown

BEFORE

Mabenge

CASE / FILE NUMBER

1098/2021

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IN THE HIGH COURT OF SOUTH AFRICA EASTERN CAPE DIVISION, GRAHAMSTOWN

CASE NO: 1098/2021

DATE HEARD: 21/10/2021

DATE DELIVERED: 18/01/2022

In the matter between

PEARLNOBOMIHLANGANE

APPLICANT

and

VUYOKAZI RELECIA BAMBATHA

FIRST RESPONDENT

COMPANIES AND INTELLECTUAL PROPERTY

SECOND RESPONDENT

COMMISSION

PVZ SECURITY SERVICES NAD CLEANING CC THIRD RESPONDENT

(REG.NO: 2009/216797/23)

JUDGMENT

MABENGAEJ:

[1] In this application the applicant applies for an order in the following terms:

1.1 That the first respondent's unlawful and fraudulent transfer of a 100% interest in the third respondent to herself be set aside.

1.2 That the second respondent be directed to cancel the first respondent's unlawful and fraudulent transfer of a 100% interest in the third respondent to herself.

1.3 That the second respondent be directed to transfer to the applicant an 80% interest in the third respondent.

1.4 That the second respondent be directed to transfer to the first respondent a 20% interest in the third respondent.

[2] It is common cause that the third respondent, PVZ Security Services and Cleaning CC came into existence in 2009 with original members being Patience Dibakwane, Zacharia Dibakwane and Vuyokazi Mbambatha. I will not state the member's interest herein as their interests are in dispute. It is also common cause that the applicant was not an original member of the third respondent. The first respondent is currently holding the majority member's interest in the third respondent. The applicant herein challenges this stating in her founding affidavit that she is in fact a member with majority interest.

[3] The applicant's case is essentially premised on the allegation that the first respondent unlawfully and fraudulently transferred a 100% interest in the third respondent to herself. This application is opposed by the first and the third respondent.

[4] In the affidavit the applicant set out a number of instances on which she relied for the relief sought.

[5] The applicant submitted that the first respondent unlawfully and fraudulently increased her interest in the third respondent from a 20% interest to a 60% interest and recorded the applicant as 40% member's interest in the third respondent. She later unlawfully and fraudulently caused herself to reflect a 50% member's interest and the applicant as a 50% member's interest. She finally caused herself to reflect a 100% member's interest in the third respondent.

[6] The applicant further submitted that the first respondent unlawfully and fraudulently caused herself to reflect a 100% member's interest to the applicant's prejudice.

[7] The first respondent's answering affidavit's challenge is that the application is fatally flawed and defective as the material facts relied upon by the applicant are in dispute. The first respondent disputes that the applicant received her membership interest properly and lawfully. In her opposing affidavit, the first respondent stated that the allocation of member's interest in the third respondent was improper and unlawful from the very onset as she was supposed to have been allocated 60% member's interest but was fraudulently denied such.

Discussion

[8] As indicated by the first respondent in its heads of argument section 37 of the Close Corporation Act [1] allows any member of a Close Corporation to voluntarily dispose of his/her member's interest or a portion thereof to any person

qualifying for membership in terms of section 29 of the Act. Such disposition must be done in accordance with an association of

agreement, if any, or with the consent of every member of the Corporation. The applicant does not allege that she got her membership in accordance with the provisions of the Act as she does not indicate that she obtained her membership in terms of an association agreement or that the first respondent consented to such. Section 30 of the same Act states that membership interest shall be transferable in the manner provided by the Act.

[9] The first respondent disputes that the applicant acquired her alleged membership interest lawfully and at this stage is probably not a lawful member of the third respondent even though the Close Corporation registration papers indicate same. The facts in this dispute are highly contested and the versions of the parties are quite divergent.

[10] In the case correctly referred to by the first respondent, *Qwaqwa United Taxi Association v Mokhasi* [2] the court stated as follows:

"On the basis of the diametrically opposed versions of the parties, it is inescapable that a bona fide dispute of fact exists as to what precisely was decided by the members of the applicant in the general meeting during 2006 in the context of the ownership of the vehicle. I fail to understand the applicant's election to prove their claim by way of motion and not by trial action. There is nothing untenable or farfetched about either party's version. The probabilities are equivocal and therefore, neither party's version warrants mere rejection on the papers. Decisions of fact cannot be founded on probabilities where they are equivocal.....The crucial and only test is whether a bona fide dispute of fact exists between the parties. That issues of fact would arise ought reasonably to have been anticipated by the applicant. The question of ownership of the vehicle is the only issue between the parties, which raised its ugly head, apart from the respondent's suspension. Applicant must have known before launching proceedings what respondent's stance would be. In these circumstances, the appropriate order is one of dismissal of the application with costs and it is so ordered."

[11] The applicant submitted that there is no genuine dispute of facts. However, this cannot be upheld as it is clear from the submissions of the first respondent in paragraphs 43 and 44 of her opposing affidavit that a genuine dispute of fact exists. There is such a dispute of fact regarding the ownership and proper transfer of the member's interest that the matter cannot be decided on the papers and as stated in the above mentioned case of *Qwaqwa United Taxi Association* the applicant must have known before launching proceedings what the first respondent's stance would be.

[12] In the circumstances the application is dismissed with costs.

MABENGE

ACTING JUDGE OF THE HIGH COURT

Appearances

Applicant: Adv LK Siyo, instructed by Mgangatho Attorneys.

Respondent: Adv MFT Botha, instructed by Jaxa Attorneys.

[1] Act 69 of 1984

[2] 2012 ZAFSHC 209

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