

SOUTH AFRICA / JUDGMENT

Hoerskool Martin Oosthuizen v April (CA & R 67/2019) [2020] ZANCHC 42 (15 June 2020)

[2020] ZANCHC 42

COURT

Northern Cape High Court, Kimberley

BEFORE

Mamosebo, Mayet

CASE / FILE NUMBER

CA & R 67/2019

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IN

THE HIGH COURT OF SOUTH AFRICA

NORTHERN

CAPE DIVISION, KIMBERLEY

Case No: CA & R 67/2019

Heard

on: 15/06/2020

Delivered

on: 03/07/2020

In

the matter between:

HOERSKOOL
MARTIN OOSTHUIZEN
Appellant
and
NATASHA
APRIL
Respondent

Quorum:

Mamosebo J et Mayet AJ

JUDGMENT**ON APPEAL****MAMOSEBO J**

- [1] This appeal is against the refusal by Magistrate A du Tait of Kakamas to grant default judgment against the respondent, Ms
- [2] The appellant, Hoerskool Martin Oosthuizen, represented by its Governing Body, issued summons against the respondent which was served personally on her on 19 May 2017. The respondent had 10 days within which to file a notice of her intention to defend the action, and within 20 days of the notice of intention to defend deliver a plea (with or without a claim in reconviction). The respondent defaulted to defend the action. The appellant applied for default judgment which was refused by the Magistrate.
- [3] The Magistrate cited the following reasons for the decisions:
- 3.1 First, the lack of clarity as to whether the appellant is a public school as provided for under sections 20 or 21 of the South African Schools Act;
- 3.2 Secondly, the lack of an averment or averments that sections 38(2), 38(3) and 39(1) of the Schools Act were complied with;
- 3.3 Thirdly, the fact that a resolution in terms of s 39(2)(a) was not attached to the summons;
- 3.4 Fourthly, non-compliance with the provisions of s 41 of the Act relating to exemption from paying school fees; and
- 3.5 Lastly, non-compliance with Rules 12(6A) and 12(6) of the Magistrates Court Rules.
- [4] The grounds for appeal as set out in the Notice of Appeal are, in summary that the Magistrate erred:
- 4.1 In ruling that the appellant had failed to show in its Particulars of Claim whether the appellant is a public school as provided for under ss 20 and 21 of the South African Schools Act, 84 of 1996; as provided for under ss 20 and 21 of the South African Schools Act, 84 of 1996;
- 4.2 In finding that the appellant failed to disclose that it was entitled to claim school fees from parents and/or costs and further that the respondent had to pay such fees. The appellant claims that it complied with ss 38(2) and (3) as well as 39(1) of the South African Schools Act[1];
- 4.3 In finding that the appellant had to attach the resolution in terms of s 39(2)(a) passed at a meeting where the school fees were approved and show that it complied with the Schools Act;
- 4.4 In finding that the appellant failed to show compliance with s 41 of the Schools Act; and

4.5 In finding that the appellant failed to comply with Rule 12(6) and 12(6)(A) of the Rules of the Magistrates' Court.

[5] It will be noted that in effect the appellant merely inversed the findings of the Magistrate in these grounds.

[6] Rule 12(1)(a) of the Magistrates' Court Rules stipulates:

"(1)(a) If a defendant has failed to deliver notice of intention to defend within the time stated in the summons or before the lodgement of the request provided for in this paragraph, and has not consented to judgment, the plaintiff may lodge with the registrar or clerk of the court a request in writing similar to Form 5 of Annexure 1, in duplicate, together with the original summons and the return of service, for judgment against such defendant for -

(i) any sum not exceeding the sum claimed in the summons or for other relief so claimed;

(ii) the costs of the action; and

(iii) interest at the rate specified in the summons to the date of payment or, if no rate is specified, at the rate prescribed under section 1(2) of the Prescribed Rate of Interest Act, 1975 (Act 55 of 1975)."

[7] The appellant's claim is founded on the respondent's obligation to pay school fees in terms of sections 39 and 40(1) of the Schools Act. For the appellant to succeed in its claim, it must allege and prove the following[2]:

7.1 The jurisdictional requirements in terms of s 40(1) of the Schools Act;

7.2 The school fees was determined in terms of s 39; and

7.3 Failure on the part of the respondent to make payment of the said school fees.

[8] Instead of the Magistrate in his reasons confining himself to the requirements set out in para 7 (above), he expanded beyond the scope of what is stipulated in terms of Rule 51(1) and (2) of the Magistrates' Court Rules, which I deal with shortly.

[9] As stated the Magistrate found that the appellant had omitted to include in its Particulars of Claim that it was a public school which falls under sections 20 and 21 of the Schools Act, because if it does it may not recover other costs except school fees. Significantly, para 1 of the Particulars of Claim reads:

"Die eiser is die Beheerliggaam van die Hoerskool Martin Oosthuizen, 'n Openbare Skool." (Own emphasis).

Noteworthy also is that while s 20 deals with functions of all governing bodies s 21 on the other hand deals with allocated functions of governing bodies. These sections were an irrelevant consideration for purposes of deciding whether to grant or deny default

judgment.

- [10] The Magistrate also referred to s 37(1) of the Act that speaks of the fact that the governing body must establish and administer a school fund in accordance with the instructions issued by the Head of the Department. It is difficult to comprehend why the information pertaining to the establishment of a school fund must be incorporated in the Particulars of Claim. That is a clear misdirection.
- [11] The Magistrate found that sections 38(2) and (3) as well as s 39 should also have been factored into the Particulars of Claim. For better comprehension I quote sections 38 and 39(1) in full:

"38. Annual budget of public school.-

- (1) A governing body of a public school must prepare a budget each year according to prescriptions determined by the Member of the Executive Council in a Provincial Gazette, which shows the estimated income and expenditure of the school for the following financial year.
- (2) Before a budget referred to in subsection (1) is approved by the governing body, it must be presented to a general meeting of parents convened on at least 30 days' notice, for consideration and approval by a majority of parents present and voting.
- (3) The notice contemplated in subsection
- (2) must also inform the parents that the budget will be available for inspection at the school at least 14 days prior to the meeting."

Section 39(1) provides:

"(1) Subject to this Act, school fees may be determined and charged at a public school only if a resolution to do so has been adopted by a majority of parents attending the meeting referred to in section 38 (2)."

- [12] The appellant has dealt with the aforementioned provisions in its Particulars of Claim paras 4, 5, and 7 as follows:

"4. Die Eiser is ingevolge die bepalings van die Skolewet geregtig om skoolgelde te vorder van alle ouers wat leerders ingeskryf het by die Hoerskool Martin Oosthuizen ooreenkomstig die gelde vooraf bepaal by 'n goedgekeurde begrotingsvergadering ten opsigte van die betrokke skooljaar.

5. Die Verweerder is in die vooropstelling aanspreeklik vir die goedgekeurde skoolgelde ooreenkomstig die voormelde begroting, tensy en tot die mate waartoe hulle van die betrokke skoolgeld kwytgeskeld is.

7. Die Verweerder was behoorlik ingelig aangaande hul reg om aansoek te doen vir kwytskelding van skoolgelde, het aansoek gedoen en gedeeltelike kwytskelding van R6 067.20 was toegestaan. Die uitstaande skoolgeld was R4 044.80, waarvan daar slegs R1 110.00 betaal was en die uitstaande balans nag R2 934.80 beloop."

[13] The Magistrate further required that the appellant should have attached the resolution adopted in terms of s 39(2)(a) to the summons. It is unclear why the Magistrate would have made this request because it is of no consequence. The following remarks by FH Grosskopf JA in *Trope and Others v South African Reserve Bank*[3] are apposite:

"It is trite that a party has to plead - with sufficient clarity and particularity - The material facts upon which he relied for the conclusion of law he wishes the Court to draw from those facts"

[14] Now turning to the requirements that the appellant needed to establish and whether or not they have been met. First, the jurisdictional requirement in terms of s 40(1) of the Schools Act stipulates that:

"Parent's liability for payment of school fees.

(1) A parent is liable to pay the school fees determined in terms of section 39 unless or to the extent that he or she has been exempted

from payment in terms of this Act."

At the risk of repetition, I have already referred to paras 4 and 5 of the appellant's Particulars of Claim which confirmed that the school fees were determined in terms of s 39 of the Schools Act at an approved budget meeting of the school. It is not in dispute that the respondent is a parent and was advised to apply for an exemption and was granted partial exemption. A statement confirming the exemption amount was attached to the summons.

[15] Para 8 of the Particulars of Claim asserts that notwithstanding proper notice to the respondent that she was obliged to pay the said school fees for the academic year 2016, she only paid an amount of R1 110.00 and failed to settle the outstanding amount of R2 934.80. The appellant explains further at para 9 of the Particulars of Claim that a period of nine months has elapsed since notification to the respondent and the amount of R2 934.80 was due and payable. Para 10 of the Particulars of Claim explains that Formal notice under section 56 of the Magistrate's Court Act 32 of 1944 was sent to the respondent. Notwithstanding proper demand, the respondent refused and I or neglected and I or failed to pay the outstanding amount due.

[16] In *Lodhi 2 Properties Investments CC and Another v Bondev Developments (Pty) Ltd*[4] the Supreme Court of Appeal pronounced: "[27] Similarly, in a case where a plaintiff is procedurally entitled to judgment in the absence of the defendant the judgment if granted cannot be said to have been granted erroneously in the light of a subsequently disclosed defence. A court which grants a judgment by default like the judgments we are presently concerned with, does not grant the judgment on the basis that the defendant does not have a

defence: it grants the judgment on the basis that the defendant has been notified of the plaintiff's claim as required by the rules, that the defendant, not having given notice of an intention to defend, is not defending the matter and that the plaintiff is in terms of the rules entitled to the order sought. The existence or non-existence of a defence on the merits is an irrelevant consideration and, if subsequently disclosed, cannot

transform a validly obtained judgment into an erroneous judgment." (Own emphasis)

[17] The respondent has failed to enter an appearance to defend. I am satisfied that the appellant has, in its Particulars of Claim, made all the necessary factual averments which would support its claim that the court a quo had jurisdiction to hear its matter and that the provisions of the Schools Act have been met.

The court a quo misdirected itself in dismissing the application for default judgment. "

[18] There is no reason why costs should not follow suit. In the result, the following order is made:

1. The appeal is upheld.
2. The Magistrate's judgment and order are set aside and replaced with the following order:

"Default judgment is granted against the respondent as follows:

1. Payment of the sum of R2 934.80.
2. Mora interest at 10.5% per annum in the amount of R2 934.00 from 23 February 2017 to date of payment.
3. Cost of the Letter of Demand in the amount of R66.04.
4. Costs of suit on a scale as between party and party."

MC MAMOSEBO

JUDGE OF THE HIGH COURT

NORTHERN CAPE DIVISION

I agree

N MAYET

ACTING JUDGE OF THE HIGH COURT

For the appellant:

Adv JM Rust

Instructed by:

VW Haddad Attorneys

For the respondent:

None

[1] 84 Of 1996

[2] See Doringkloof Primary School v Tshiguvho and Another (A383/2018)

[2019] ZAGPPHC 171 (30 May 2019) at para 9

[3]

[1993] ZASCA 54; 1993 (3) SA 264 (A) at 273A

[4] 2007 (6) SA 87 (SCA) at 95 (para 27)

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