

SOUTH AFRICA / JUDGMENT

Investec Bank (Mauritius) Ltd v Mohan (6713/2010) [2012] ZAWCHC 148 (10 July 2012) [2012] ZAWCHC 148

COURT

Western Cape High Court, Cape Town

BEFORE

Henney

CASE / FILE NUMBER

6713/2010

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JUDGMENT

IN THE HIGH COURT OF SOUTH AFRICA

(WESTERN CAPE HIGH COURT, CAPE TOWN)

CASE NUMBER: 6713/2010

DATE: 10 JULY 2012

In the matter between:

INVESTEC BANK (MAURITIUS) LTDApplicantand

LEO GERARD MOHANRespondent

(Application for security for costs and leave to appeal)

HENNEY, J:

The history of the litigation between the parties is on record; I am not going to deal with that, just to say that this is an application wherein the respondent is ordered to provide security for costs, wherein the Court is requested to direct the respondent to give security for costs in the proceedings in the amount of R250 000, and to pay this amount of R250 000 to the Registrar of the Honourable Court within 10 days from the date upon which the court orders the respondent to give the security for costs.

Furthermore, directing that the appeal proceedings sought to be pursued by the respondent be stayed until the respondent has given security for costs of this application.

An appeal was lodged against judgment delivered on 20 March 2012 by Gangen, AJ. An application for leave to appeal against that judgment was launched on 13 April of this year. It needs to be mentioned that the judgment of Gangen AJ did not deal with the merits of the application; it was just about the enforcement of an earlier court order granted by consent by Baartman J dated 29 April 2010.

It would seem that there is a further argument that the respondent will raise in the application for leave to appeal that Gangen, AJ erred in coming to certain conclusions in the judgment, and for that reason the application for leave to appeal was launched.

There is no evidence at this stage that the appeal, after it was launched on 13 April 2012, was prosecuted.

The applicant contends that this application for leave to appeal is dilatory, that it frustrates the enforcement of the order that was granted earlier on 29 April 2010 by Baartman J.

I am of the view that the applicant has made out a case, insofar as that is concerned; that it is almost three months since the application for leave to appeal has been launched, and the appeal has not been prosecuted and more than two years since the original court order was handed down by Baartman J. No good reasons had been presented to this court for this delay.

This is about the enforcement of a judgment, not of the merits of the application. The Respondent wants this order of Baartman J to be implemented. It was delayed initially by the proceedings instituted and over which Gangen AJ had made a decision. It will once again be delayed and frustrated by an appeal. Whilst the Respondent has the right to appeal, in my view it would only be fair to the Applicant who have waited so long for the order of Baartman J that was taken by consent to be implemented. The Applicant has a right to proceed with his appeal, but has delayed without good reason. In order for the Applicant to genuinely proceed with the appeal and delay the execution of this order unnecessary an order for security for costs in this matter would therefore not be unduly harsh or inappropriate. Therefore, the application that the respondent, as contained in the notice of motion, give security for the costs in the appeal matter in the amount of R250 000, as set out in prayer 1.1 of the original notice of motion is granted.

The respondent is also directed to pay an amount of R250 000 to the Registrar of the Court within 10 days from today, and also the Court directs that the appeal proceedings sought to be pursued by the respondent be stayed until the respondent has given security for costs of this application.

The Court also orders that the respondent pays the costs of this application.

HENNEY, J

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