

SOUTH AFRICA / JUDGMENT

JS Afslears CC t/a Swarico Afslaers v Botha N.O and Others (50323/14) [2017] ZAGPPHC 1294 (10 August 2017) [2017] ZAGPPHC 1294

COURT

North Gauteng High Court, Pretoria

BEFORE

Mavundla

CASE / FILE NUMBER

50323/14

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IN

THE NORTH GAUTHENG HIGH COURT,PRETORIA

[REPUBLIC

OF SOUTH AFRICA]

In

the matter between:

JS

AFSLEARS CC t/a SWARICO AFSLAERS APPLICANT

And

BOTHA

JOACHIM HENDRIK N.O.

1ST RESPONDENT

DEON

MARIUS BOTHA N.O.

2ND RESPONDENT

RAMUEDZISI

VHONANI DENG A N.O.

3RD RESPONDENT

CARSTENS

DAVID RICHARD MARTIN

4TH RESPONDENT

DAVID

RICHARD MARTIN CARSTENS SENIOR

5TH RESPONDENT

In

re: In
the matter of
JOACHIM
HENDRIK BOTHA N.O.
1ST APPLICANT
MARIUS
BOTHA N.O.
2ND APPLICANT
VHONANI
DENG RAMUEDZISI N.O 3RD APPLICANT
DAVID
RICHARD MARTIN CARSTENS
1ST RESPONDENT
THE
PERSONS CAPTURING THE GAME AT OR NEAR
REMAINING
EXTENT OF PORTION 2 OF THE FARM
SWEET
HOME AND REMAINNG PORTION 8
OF
THE FARM SWEET HOME AND THE FARM VERGEET
MY
NIET 194, DISTRICT VENTERSDORP,
NORTH
WEST PROVINCE
2ND RESPONDENT
DAVID
RICHARD MARTIN CARSTENS SENIOR
3RD RESPONDENT

JUDGMENT

MAVUNDLA, J.

[1] The applicant sought an order that:

1.1 he be granted leave to intervene in the main application and be joined as the fourth respondent;

1.2 any of the respondents are interdicted and restrained from removing or alienating the game ("the game") in the game camp situated on the farm Remaining Extent of portion 2 of the Farm Sweet Home, Remaining Extent of Portion 8 of the Farm Sweet Home and of the Farm Vergeet My Niet; and staying the main application pending the outcome of the action to be instituted by the intervening applicant for the declaratory relief. that the intervening applicant is the owner of the game within 30 days pursuant to an order in terms hereof, and

1.3 that the costs of the application be costs in the aforesaid envisaged action, alternatively, if any party opposes the application, that such party be ordered to pay the costs.

- [2] The reason for leave to intervene and be joined as one of the respondents in the main application, is to seek an order that the application be stayed and that an interdict be granted against the provisional liquidators of the insolvent estate, who might lay claim thereto or which to dispose or alienate such game, pending an action to be instituted by Swarico to be declared the owner of the game, within 30 days from date of an order in terms of the order sought herein.
- [3] I must hasten to state that in my view, the application to intervene needs to be dismissed with costs for the reasons stated herein below
- [4] For purposes of convenience, I shall refer to the applicant as "Swarico"; the first, second and third respondents as the "liquidators", the fourth respondents as the "insolvent", and the fifth respondent as "Casterns senior" .
- [5] The liquidators in the main application, as provisional liquidators sought an interdictory relief pending the finalisation of an action for the final relief to be instituted within 30 days after date of their appointment as final trustees in the estate of the insolvent.
- [6] It is trite that the liquidators are duty bound to, inter alia, take charge of the assets of an insolvent in order to protect the interest of the creditors; vide *Standard Bank v Master of the High Court* ; vide *Standard Bank v Master of the High Court* [1] ; *Meyer NO v Tvl LewendehaweKoop en Andere*. [2]
- [7] In their capacities as provisional trustees of the insolvent, the liquidators sought an order that the third respondent, being the father of the insolvent, should be restrained from shooting, capturing, removing or In any other way dealing with any of the game in the game camp situated on the farms mentioned herein above, pending an action to be instituted for a final declaratory that the game is part of the insolvent's estate. A rule nisi in this regard was obtained and stands extended pending the judgment regarding the confirmation or discharge thereof .
- [8] Swarico seeks leave to intervene in the main application , contending, inter alia, that it is the owner of the relevant game. The applicant contends that in the main application there is a plethora of factual disputes that have arisen. He contends that Carstens senior disputes the entitlement of the trustees to the relief they seek, namely that the game falls within the insolvent estate. The applicant further contended that the relevant game was purchased by Carstens senior from Swarico. In this regard the applicant proffered a copy of a tax invoice, purportedly issued by itself to Carstens senior on the 29 August 2012. The reverse of the copy of the tax invoice contains what the applicant contended to be the terms and

conditions of the sale of the game. In the terms of clause 3 of the terms and conditions, ownership in respect of the game remains with Swarico until such time as the full purchase price, together with interest and costs and damages, if any applicable, has been paid In full.

[9] It is trite that the question of granting leave to intervene is a matter of the discretion of the Court . The applicant must satisfy the Court that it has an interest to protect; vide *Vandenhende v Minister of Agriculture, Planning and Tourism*, WC.[3] It needs mentioning that in the main application Casterns senior contended that he is the owner of the game in dispute, which he

bought from Swarico Auctioneers, and attached annexure "B" showing that he bought same for R339 264. 00. The latter confirmed

having read the answering affidavit of Casterns senior. To emphasise that he is the owner of the game, Casterns senior further deposed that: "The fact that he is the owner of the game is confirmed by permit 14/0021NM, issued by the Department of Economic Development, Conservation and Tourism, North West Province, in which they confirmed and gave permission for me to sell and transport my game." Swarico, confirmed the above allegations per Steinmann's confirmatory affidavit.

[10] It needs mentioning that both Carstens senior and Swarico, in my view, prevaricated in their earlier depositions, regarding the ownership of the game and tried to mislead the Court by tailoring their subsequent evidence through their further affidavits. Carstens senior, subsequently tried to justify the inconsistencies or contradictions in his affidavits by pleading illiteracy and blaming his initial legal representatives, in not fully canvassing with him the issue of ownership or conditional sale of the game.

[11] Swarico further contradicted itself by stating that the game belonged to Pienika Farming CC ("Pienika").

[12] Regarding being had to the contradictions on the part of the applicant, as to whether the game belonged to Casterns senior, or Swarico or Pienika, I am unable to find that the applicant has demonstrated that it has any right to protect. As such, in the exercise of my discretion, I incline towards dismissing the application to intervene, with costs.

[13] Accordingly the application for leave to intervene is dismissed· with costs

N.M. MAVUNDLA

JUDGE OF THE COURT

DATE OF JUDGEMENT :

10/08/2017

APPLICANT'S ADV

ADV SJ VAN RENSBURG

INSTRUCTED BY:

: D P DUPLESSIS INC.

1st to 3RD RESPONDENTS' ADV ADV. MP VAN DER MERWE SC

INSTRUCTED BY:

: TIM DU TOIT & CO INCORPORATED

ATTORNEY FOR THE FIFTH RESPONDENT: BOSMAN & BOSMAN ATTORNEYS

[1] 2010 (4) SA 405.

[2] 1982 94) SA (AA) at 749G-H

[3] 2000 (4) SA 681 WC at 688 H.

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Prepared on 10 October 2026 · Esheria