
SOUTH AFRICA / JUDGMENT

Keyes NO v Ellinas and Another (62385/13) [2015] ZAGPPHC 800 (18 November 2015) [2015] ZAGPPHC 800

COURT

North Gauteng High Court, Pretoria

BEFORE

M F Legodi

CASE / FILE NUMBER

62385/13

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HIGH COURT OF SOUTH AFRICA

(GAUTENG DIVISION, PRETORIA)

CASE NO: 62385/13

18/11/2015

NOT REPORTABLE

NOT OF INTEREST TO OTHER JUDGES

REVISED

IN THE MATTER BETWEEN

TREVOR THOMAS KEYES NO. Applicant

and

CHRIS ELLINAS First

Respondent

JANGO ELLINAS Second

Respondent

REASONS FOR THE ORDER

LEGODI J,

HEARD ON: 16 NOVEMBER 2015

- [1] This matter is about costs occasioned by the postponement of an application by the plaintiff in the main application. In the main application, the plaintiff wants the defendant to be compelled to furnish better particulars for purposes of trial. The file was prepared, indexed and paginated by the plaintiff without including the particulars of claim and the defendant's plea. This was the third matter in the course of the week in which this court had to deal with incomplete files and half-hearted manner in which files are presented to court on the opposed motion roll.
- [2] Complete and proper preparation of the court's files well in time especially on the opposed motion roll is vital. It enables the court to prepare properly and most importantly, it ensures that matters are disposed of expeditiously. That is also achieved when lawyers are well prepared and organized in the presentation of their matters.
- [3] In terms of the practice directive for this court, prior to the setting down of the application on the opposed motion roll, the applicant must ensure that all the documentation before the court for the determination of the application is properly bound. Prior to the hearing of the application the applicant is required to deliver a complete index of all documentation to the registrar for the determination of the application.
- [4] On 18 November 2015 I made an order as follows:
- "1. The application is postponed sine die to enable the applicant (the plaintiff in the main application) to file particulars of claim and the defendant's*
- plea for the purpose of the application to compel;
2. The applicant/plaintiff to pay the wasted costs occasioned by the postponement;
3. Reasons for the order on costs to be given on request".
- [5] I now find it necessary to give reasons despite the fact that no request for the reasons has been made. On 24 March 2015 the plaintiff made a request for further particulars to prepare for trial. On 6 May 2015 the defendants replied to the request for further particulars. The plaintiff was not happy with the further particulars furnished. On 11 May 2015 the plaintiff's attorneys notified the defendants' attorneys that the present application will be launched unless there was full compliance to the request. The application was launched and was opposed by the defendants. In preparation for the file as I said, the plaintiff decided not to include all the pleadings in the application bundle.
- [6] The defendants in their practice note alluded to the fact that particulars of claim and the defendant's plea and annexures
- thereto need to be read. Counsel for the plaintiff however, took the view that it was not necessary to do so. He argued

that the plaintiff's written heads of argument and the application to compel were sufficient for determination of the application without complete set of pleadings. This court had gone through what is placed before it, including the written heads of argument. There is just no way in which one could deal with the request for better particulars without complete set of pleadings and I was not persuaded by the submission made by counsel on behalf of the plaintiff.

[7] This is where legal practitioners make mistake. To want to take the court through incomplete papers and pleadings in my view, smacks and undermines the court's need to have sufficient time to prepare properly for hearing of matters placed on the opposed motion roll. This has impending effect on expeditious finalization of matters.

[8] It is incumbent on the parties to ensure that files are properly prepared and arranged to avoid disappointments in dealing with this matter. Once it was conveyed by the defendants' counsel in his practice note that particulars of claim and defendants'

plea were necessary for the determination of the application to compel, it was incumbent on the plaintiff's attorneys to ensure that everything is placed before the court. That did not happen and it resulted in the postponement of the matter. These are the reasons for the order on costs made on 18 November 2015.

Consequently the order for costs made on 18 November 2015 still stands.

.....

M F LEGODI

JUDGE OF THE HIGH COURT

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