

SOUTH AFRICA / JUDGMENT

Kloof Investment 2004 CC v Garry Isaacs t/a Build-O-Rama Builders Merchants (23305/2010) [2010] ZAWCHC 552 (12 November 2010)

[2010] ZAWCHC 552

COURT

Western Cape High Court, Cape Town

BEFORE

J I CLOETE

CASE / FILE NUMBER

23305/2010

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IN THE HIGH COURT OF SOUTH AFRICA

(WESTERN CAPE HIGH COURT, CAPE TOWN)

Case No. 23305/2010

In the matter between:

KLOOF INVESTMENT 2004 CCApplicant

And

GARY ISAACS

t/a BUILD-O-RAMA BUILDERS MERCHANTSRespondent

RESPONSE TO REQUEST FOR REASONS FOR ORDER

CLOETE, AJ

- [1] On 28 October 2010 I made an order in terms whereof I directed that the matter was to be dealt with as one of urgency.
- [2] On 19 November 2010 the respondent delivered a Notice in terms of Rule 49(1)(c) requesting me to furnish reasons for the order (in respect of urgency only).
- [3] Rule 49(1)(c) provides that:

When in giving an order the court declares that the reasons for the order will be furnished to any one of the parties on application, such application shall be delivered within ten days after the date of the order.'

[4] The ten day period referred to in r 49(1)(c) expired on 11 November 2010, and accordingly, the respondent's request for reasons is out of time.

[5] In any event, it is my view that my finding that the matter was urgent is not appealable. Such finding was not a final determination

dispositive of the matter or concerning its merits. It was, rather, a discretionary decision made by this court in the exercise of its inherent jurisdiction confirmed by s 173 of the Constitution to regulate its own procedure. The time periods adopted in urgent matters concern not the merits of those matters, but the procedural arrangements most appropriate to the matters. In *Commissioner, SARS v Hawker Air Services (Pty) Ltd* [2006] ZASCA 51; 2006

(4) SA 292 (SCA) at 299G-H, the court stated as follows:

'Urgency is a reason that may justify deviation from the times and forms the rules prescribe. It relates to form, not substance, and is not a prerequisite to a claim for substantive relief. Where an application is brought on the basis of urgency, the rules of court permit a court (or a judge in chambers) to dispense with the forms and service usually required, and to dispose of it "as to it seems meet" [Rule

6(12)(a)]. This, in effect, permits an urgent applicant, subject to the court's control, to forge its own rules ..."

[6] Section 173 of the Constitution provides that:

'The Constitutional Court, Supreme Court of Appeal and High Courts have the inherent power to protect and regulate their own process, and to develop the common law, taking into account the interests of justice.'

[7] The only qualification on the exercise of a s 173 power is that a court must take into account the interests of justice. The exercise of a s 173 power is thus not appealable.

[8] I accordingly find that it is not necessary for me to deliver reasons for the order which I made on 28 October 2010.

J I CLOETE, AJ

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