

SOUTH AFRICA / JUDGMENT

Lechoano v Mogotsi and Others (3227/2018) [2018] ZAFSHC 159 (10 September 2018)

[2018] ZAFSHC 159

COURT

Free State High Court, Bloemfontein

BEFORE

M Opperman

CASE / FILE NUMBER

3227/2018

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IN THE HIGH

COURT OF SOUTH AFRICA

FREE

STATE DIVISION, BLOEMFONTEIN

Case number: 3227/2018

In

the matter between:

MOALEDI
ANDRIES
LECHOANO APPLICANT
and
LEBEKO
ANDRIES
MOGOTSI 1ST
RESPONDENT
PRECINCT
FINANCIAL SERVICES PTY LTD 2ND
RESPONDENT
ABSA
BANK
LTD 3RD
RESPONDENT
FIRST
NATIONAL
BANK 4TH
RESPONDENT

CORAM: M
OPPERMAN, J
HEARD
ON: 16
AUGUST 2018

JUDGEMENT

BY: M OPPERMAN, J

REASONS

ON: 10 SEPTEMBER 2018

1. On the 20th of August 2018 the following was filed with the court:

Request for reasons in terms of Rule 49(1)(c). The 1st respondent hereby requests the Honourable Mrs. Acting Justice Lanie Opperman for reasons for the order granted on Thursday, 16 August 2018 and more specifically the reason(s) why the 1st respondent was ordered to pay the wasted costs of the extension of the Rule Nisi.

2. The matter was placed for argument by the 1st respondent on the 16th of August 2018 as opposed motion.
3. The matter was not placed for the mere extension of the Rule Nisi on the 16th of August 2018.
4. On 22nd of June 2018 the applicant sought and obtained an urgent interdict in terms of which the 1st and 4th respondents are interdicted from paying monies from the two accounts of the 1st respondent, held by the 3rd respondent and 4th respondent, before the dispute between the parties is resolved by agreement or order of court.
5. The Rule Nisi was granted on an ex parte basis and the 1st respondent only gained knowledge of it approximately a week after it was granted.
6. Subsequent hereto the parties herein held a mediation in which a settlement was concluded.
7. The matter was placed on the unopposed motion court roll for the settlement to be made an order of the court.
8. According to counsel for the applicant the 1st respondent opposed the motion for the settlement to be made and order of court.
9. The matter was placed on the 16th of August 2018. The 1st respondent wanted to argue the matter but counsel for applicant indicated that he was not in a position to argue the matter because:

9.1 “On 2nd July no opposition was filed.

9.2 the opposing affidavit was only received yesterday (15 August 2018),

9.3 this morning they want to argue the case,

9.4 the right to reply was not entertained and

9.5 the settlement was not dealt with.

9.6 No heads of arguments were filed.”

10. Counsel for 1st respondent conceded to the above and requested for the costs for the day to be costs in the cause. Counsel for the applicant requested an order against the 1st respondent for the wasted day.

11. The day was wasted by the 1st respondent. The court therefor made the order for costs against the 1st respondent.

12. In addition to the above it is noted that the 1st respondent; in their Heads of Argument filed on 27 August 2018, prays for condonation of the late filing of their Heads of Argument.

Justification for the order on the 16th of August is confirmed hereby and the conduct persists.

M OPPERMAN, J

ATTORNEY FOR THE 1ST RESPONDENT: M.L ODENDAAL

PHATSHOANE HENNEY

35 Markgraaf

Westdene

Bloemfontein

Ref: MOG58/0001/mlo

ATTORNEY FOR THE APPLICANT: PIETER WILLERS

WILLERS ATTORNEYS

52 Reid Street

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