

SOUTH AFRICA / JUDGMENT

Limeco CC v CMV Plant Hire CC (12279/2015) [2015] ZAKZDHC 40 (19 May 2015) [2015] ZAKZDHC 40

COURT

Kwazulu-Natal High Court, Durban

BEFORE

Jeffrey

CASE / FILE NUMBER

12279/2015

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IN THE HIGH COURT OF
SOUTH AFRICA
KWAZULU-NATAL LOCAL
DIVISION, DURBAN
CASE NO.: 12279/2015
DATE: 19 MAY 2015

In the matter between:

LIMECO
CC

.....Plaintiff

And

CMV PLANT HIRE
CC.....

Defendant

JUDGMENT

Heard: 12th May 2015

Delivered: 19th May 2015

JEFFREY AJ:

- [1] This matter concerns the correct application of the practice in the KwaZulu-Natal Divisions of the High Court when a direction by the court or a judge in chambers is sought that a matter be enrolled by the Registrar on the expedited roll for hearing.

- [2] The plaintiff has brought an application for a direction that the trial in this matter be so enrolled. Such a direction may be made in terms of Practice Directive No. 21 of the KwaZulu-Natal Divisions of the High Court in certain defined circumstances including those matters to which the provisions of Rule 32 apply, namely, in summary judgment matters. The plaintiff alleges that this is the position in this matter. The relevant portions of Practice Directive No. 21 are set out in an appendix to this judgment.
- [3] The passage of the action to date has been the following. After service of the simple summons, the action was defended by the defendant. The plaintiff then duly brought an application for summary judgment that was opposed and an opposing affidavit was delivered by the defendant. On 8 January 2015, when the application for summary judgment came before the court, the usual order refusing summary judgment was granted by consent. Some six weeks later on 23 February 2015, the plaintiff delivered its declaration. The defendant's plea has yet to be delivered. This application was instituted on 16 March 2015 nearly ten weeks after the usual order refusing summary judgment was granted. The Notice of Motion merely stated tersely, reiterating the requirements of Practice Directive No. 21, that Rule 32 was applicable; there was no substantial point of law that would require determination; the whole or a substantial portion of the matter would be disposed of by evidence lasting no longer than one day; and it was in the interests

of justice that this Court grant the aforementioned direction.

- [4] Mr Garland, who appeared for the plaintiff submitted that, despite the usual order refusing summary being granted nearly ten weeks before this application before me was instituted, the summary judgment provisions of Rule 32 applied to the matter and, therefore, Practice Directive No. 21 was applicable. It was accordingly competent, so his argument continued, for me to direct the Registrar to enroll the matter on the expedited trial roll for hearing.
- [5] I do not agree.
- [6] The practice directives of the KwaZulu-Natal Divisions of the High Court do not bind the courts and they certainly do not fetter, by prescribing when and how judges ought to exercise their discretion in relaxing or deviating from the practice in an appropriate case. The practice directives attempt to establish uniformity and certainty in those matters which they address. Thus, as it is envisaged in the preamble to the practice directives, any deviations from the standard practice covered by the practice directives should be made only in exceptional circumstances and any individual departure from a particular practice directive is not regarded as a modification or change of that practice. Changes can only come about when this is done with the authority of the judge president in consultation with the other judges of the division as occurred, for instance, in *Cele v South African Social Security Agency & 22 Related Cases* 2009 (5) SA 105 (D). See generally *Khathi & another v Standard Bank of South Africa Ltd & another* [2010] JOL 26174 (KZP) at para [26].

- [7] With specific reference to the matter before me, the standard practice is that at the time when the summary judgment application is before the court and the usual order refusing summary judgment is granted, a direction may be given to the Registrar that the matter be enrolled on the expedited roll for hearing. Reported examples of where this occurred are *BMW Financial Services (SA) (Pty) Ltd v Donkin* 2009 (6) SA 63 (KZD) 67A at para [4] and *Dass and Others NNO v Lowewest Trading (Pty) Ltd* 2011 (1) SA 48 (KZD).
- [8] There are sound reasons for this. Such a direction may be given, as the practice directive specifically envisages, if it appears to the court or judge in chambers as the case may be, that (a) no substantial point of law will require determination; and/or (b) the whole or a substantial portion of the matter will be disposed of by evidence not lasting longer than one day; and (c) it is in the interests of justice to do so. The issues before the court in making or refusing to make the direction arise from the papers in the summary judgment application before it. In other words, as the practice directive contemplates, the matter before the Court must be one where the provisions of Rule 32 relating to summary judgment apply. Once such a direction is made by the court, the pre-trial procedures - including the delivery of a declaration - envisaged in paragraph 21.4 of the practice directive are applicable, subject always to the court directing otherwise.
- [9] In this matter the plaintiff's delivery of its declaration well after the time when the summary judgment application was before the court and the delay in bringing this application *prima facie* remove this matter from the ambit of the practice directive unless there are exceptional circumstances present that justify a departure from the usual practice.
- [10] In this matter the issues that were before the court at the time when the summary judgment application was heard may not be the same now as they were then. Indeed, as I have said, the defendant still has to plead and further issues may be raised by it. A directive, therefore, that the matter be enrolled by the Registrar on the expedited roll cannot be made properly in these circumstances unless, as I have said, there are exceptional circumstances justifying a departure from the usual practice. No exceptional circumstances were placed before me that would justify a departure from the usual practice envisaged by the practice directive. In the result this application must fail.
- [11] Even if a direction could have been competently made by me for the matter to be enrolled on the expedited trial roll, Mr Chetty, who appeared for the defendant submitted that one of the issues between the parties is that of delivery of the goods on which the plaintiff's claim is based. There are, he submitted, five witnesses who would be called on behalf of the defendant on this issue. Although counsel were not *ad idem* on this point, if the defendant intends to call five witnesses I have grave reservations as to whether the whole or a substantial portion of the matter will be disposed of by evidence not lasting longer than one day. If the evidence exceeds one day then this could disrupt the proper functioning of the courts and cause inconvenience not only to

other litigants who have been waiting patiently in the queue for their matters to be enrolled on the trial roll but also cause great inconvenience to the court hearing the matter, as D Pillay J, with respect, aptly remarked in another context in *Standard Bank of South Africa Ltd v Dlamini* 2013 (1) SA 219 (KZD) 238E at para [79]. So, even if it was competent to make the direction sought, which I have found that it is not, the application would have been refused by me on this ground alone.

[12] I make an order that the application is dismissed with costs.

JEFFREY AJ

Appearances:

Counsel for the plaintiff : Mr R Garland

Applicants' attorneys : Peacock Liebenberg & Robert Mitchley/jdm/MAT14478

Tel. 031 708 2266

Counsel for the

defendant : Mr K J Chetty

Defendant's attorneys : Thorpe & Hands Inc

Ref. Mr K Walker/am/08/C001021

Tel. 031 305 3641

Date of hearing : 12th May 2015

Date of judgment : 19th May 2015

APPENDIX

Expedited Hearing

21.1 The registrar shall maintain a separate roll of cases, which shall be called 'The Expedited Roll', for hearing on an expedited basis.

21.2 The registrar shall enrol matters on the expedited roll only when directed to do so by order of court or by a judge in chambers.

21.3 In all matters to which the provisions of:

21.3.1 Uniform Rule 6 (5) (d) (iii), or

21.3.2 Uniform Rule 6 (5) (g), or

21.3.3 Uniform Rule 8, or

21.3.4 Uniform Rule 32

apply and it appears to the court or the judge, as the case may be, that no substantial point of law will require determination, and/or that the whole or a substantial portion of the matter will be disposed of by evidence not lasting longer than one day, and that it is in the interests of justice to do so, the court or the judge may *mero motu*, or on the application of any of the parties on notice to the others, after considering the submissions of all the parties, direct that (referred to hereafter as 'a direction'

or 'the direction'), subject to the provisions of this Rule, the matter be placed on the expedited roll.

21.4 In matters to which the provisions of subrule 3.4 of this rule apply, and unless the court or judge otherwise directs:

21.4.1 in matters requiring the filing of a declaration, the plaintiff shall file a declaration within five days of the direction being made, failing which he shall be *ipso facto* barred;

21.4.2 the defendant shall file a plea within five days of the direction being made or the declaration being filed, as the case may be, failing which he shall be *ipso facto* barred;

21.4.3 the plaintiff shall comply with the provisions of Uniform Rule 35 (1), *mutatis mutandis*, within five days thereafter and shall simultaneously index and paginate the court file and shall serve a copy of the index on the defendant;

21.4.4 the defendant shall comply with the provisions of Uniform Rule 35 (1), *mutatis mutandis*, within five days thereafter, save that the defendant shall not be entitled to rely upon any document at trial, which has not been so discovered, without the leave of the court;

21.4.5 the parties shall hold a pre-trial conference and shall comply with the provisions of Uniform Rule 37, *mutatis mutandis*, not less than five days before the hearing of the matter.

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