

SOUTH AFRICA / JUDGMENT

Macgregor and Another v Janse Van Rensburg And Others; In re: Janse Van Rensburg and Another v Commissioner of Child Welfare, Springs and Others (2015/04647) [2016] ZAGPJHC 138 (13 May 2016) [2016] ZAGPJHC 138

COURT

South Gauteng High Court, Johannesburg

BEFORE

L Adams

CASE / FILE NUMBER

2015/04647

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IN THE

HIGH COURT OF SOUTH AFRICA

GAUTENG

LOCAL DIVISION, JOHANNESBURG

CASE NO:

2015/04647

DATE: 13

MAY 2016

In the matter

between:

MacGREGOR,
EUNICE.....First
Applicant
MacGREGOR,
MARK.....Second
Applicant
- And -
JANSE VAN RENSBURG,
COBUS.....First
Respondent
JANSE VAN RENSBURG,
NALENE.....Second
Respondent
THE COMMISSIONER OF
CHILD WELFARE, SPRINGS
(MS JANSEN VAN
VUUREN
N.O.).....Third
Respondent
THE INVESTIGATING
SOCIAL WORKER FROM THE
DEPARTMENT OF SOCIAL
WELFARE, SPRINGS
(MS A M
FERREIRA).....Fourth
Respondent
BOTH A,
ESTELLE.....Fifth
Respondent
MacGREGOR,
CLINTON.....Sixth
Respondent

IN RE:

JANSE VAN RENSBURG,
COBUS.....First
Applicant
JANSE VAN RENSBURG,
NALENE.....Second
Applicant
(MS JANSE VAN VUUREN
N.O.).....First
Respondent
(MS A M
FERREIRA).....Second
Respondent
BOTH A,
ESTELLE.....Third
Respondent
MacGREGOR,
CLINTON.....Fourth
Respondent

JUDGMENT

ADAMS AJ:

[1]. The first and second applicants apply for leave to intervene as respondents in the main application. The first and second respondents

are the applicants in the main action and claim relief founded in terms of the Children's Act. They ask this court to grant to them certain parental rights and duties relative to a minor child, C, who is at present in their Foster Care.

[2]. The first and second applicants are the paternal grandparents of C, and the parents of the fourth respondent, the father of C.

[3]. This matter has had a long and at times sad history. At the centre of the drama is C, a 4 year old girl who during June 2013 was placed in the Foster Care of the first and second respondents. She has since then lived with the first and second respondents, and by all accounts C appears to have settled in and is comfortable and at home with them. First and second respondents wish to take the relationship to the next level, hence their application ('the main application') to attain certain parental rights and duties. They have also expressed a desire to ultimately legally adopt C.

[4]. The main application is being opposed by the fifth and sixth respondents. As happens in these matters, the third and fourth respondents are parties to this application, and second and first respondents to the main application, to ensure that the interest of the minor child is protected. In the past, they were consulted and in some instances they gave advice and made rulings which had an influence on the life of C.

[5]. The applicants have always been involved in the life of the minor child, who has not always had it easy. When she was still a toddler they were instrumental in her being placed in the foster care of the first and second respondents. Whilst she was in the care of the first and second respondents, they used to visit C, and they seemingly did their best to be good grandparents to her and to forge a close relationship with her.

[6]. In this application the applicants simply ask for leave to intervene as respondents in the main application. They would like to be heard in that matter, because, so it is contended on their behalf, they are after all C's grandparents, and they have an interest in an application in which parental rights and duties relating to their grandchild are in issue.

[7]. Though there is a distinct difference between a claim of joinder as of right and an application for leave to intervene, the two matters are closely linked and, in fact, intervention is often treated as a particular facet of joinder. In regard to joinder certain principles have become established, different principles applying to different circumstances, depending upon whether the court is concerned with a plaintiff's right to join parties as defendants, a defendant's right to demand that parties be joined as co-defendants, the rights of third parties to join either as plaintiffs or defendants, or the court's duty to order the joinder of some other party.

[8]. The position in regard to intervention is less clear. It is often said that the court has a discretion where a party seeks leave to intervene — a discretion which does not appear to exist where the non-joinder of a necessary party is raised by the defendant or the court *mero motu* — and that the power of the court to grant leave to intervene is wider than where joinder of another is demanded as of right. There has, however, been no authoritative definition of the limit of that discretion or of the category or categories of cases where the court would grant leave to intervene even though a plea of non-joinder could not succeed. When some decisions relating to intervention are examined, it appears that, as in the case of joinder as of right, the test of a direct and substantial interest in the subject matter of the action is regarded as being the decisive criterion.

[9]. As in the case of joinder as of right, the applicant for leave to intervene must show that he has a ‘direct and substantial interest’ in the subject matter of the action. Such an interest is more than merely a financial interest which is only an indirect interest in the litigation; it is a legal interest in the subject matter of the litigation that may be prejudicially affected by the judgment of the court.

[10]. Rule 12 deals with the intervention in an action by persons who have a legal interest in the subject matter of litigation between other parties that may be prejudicially affected by the judgment of the court. Such persons may be allowed to intervene as plaintiffs or defendants in the action, not because they have separate claims or because separate claims may be brought against them, but because their interests which may be prejudicially affected coincide with those of the plaintiff or of the defendant in the action. See the remarks by Van den Heever in *Hersch v Esterhuizen*, 1946 OPD 370 at 372.

[11]. In *Shapiro v South African Recording Rights Association Ltd (Galeta Intervening)*, 2008 (4) SA 145 (W) at 150B – 151E, it was held that rule 12 covers both scenarios set out in the preceding paragraph and that, generally, the approach followed in *Vitorakis v Wolf*, 1973 (3) SA 928 (W) at 930G – H, would apply to applicants who wish to intervene, whereas the ‘direct and substantial interest’ approach would apply to respondents who wish to intervene.

[12]. Applying these principles to the present matter I am of the view that the applicants are entitled to intervene in the main application. Their direct and substantial interest in the main application lies therein that parental rights and duties stand to be granted to the first and second respondents, which would mean that their right to apply for those rights and duties would be impacted.

[13]. In that regard, I am satisfied that the applicants have shown that they have a *prima facie* case that they have an interest in the main application, that their application is seriously made; and that it is not frivolous. In *Shapiro v South African Recording Rights Association Ltd (Galeta Intervening)*, 2008 (4) SA 145 (W), it was held that, whilst this test applies to persons wishing to intervene as defendants or respondents, the first requirement thereof (i.e. the direct and substantial interest requirement), is too limited, and will be generally inapplicable, for persons wishing to intervene as applicants. In the latter instance, the approach adopted in *Vitorakis v*

Wolf (i.e. that the right of the person seeking leave to intervene as or an applicant is dependent upon the determination of substantially the same question of law or fact) should, as a first requirement, be followed.

[14]. At the stage of an application for leave to intervene the court need not be over concerned with the intrinsic merits of the dispute which can be fully canvassed in the main proceedings: it is sufficient for the party seeking leave to intervene to rely on allegations which, if they can be proved in the main action, would entitle him to succeed. See *Ex parte Moosa; In re Hassim v Harrop – Allin*, 1974 (4) SA 412 (T).

[15]. An applicant will not be refused leave to intervene in order to defend his interests merely because the court considers that the legal grounds upon which those interests are assailed are bad, for there is always the possibility of an appeal against the court's

judgment.

[16]. The court has a discretion where a party seeks leave to intervene, there has been no authoritative definition of the limit of that discretion. Although a direct and substantial interest in the subject matter of the action is a *sine qua non*, the court, so it seems, may have regard to considerations of convenience. However, it has been held that in a case where the applicants base their claim to intervene on a direct and substantial interest in the subject matter of the dispute, the court has no discretion: it must allow them to intervene because it should not proceed in the absence of parties having such legally recognized interests.

[17]. In opposing the application for leave to intervene, the first and second respondents have relied heavily on the fact that, according to them, the applicants are unlikely to succeed with any claims for relief aimed at themselves acquiring parental rights and duties relative to C. As I have indicated above, at the stage of an application for leave to intervene I need not be over concerned with the intrinsic merits of the dispute which can be fully canvassed in the main proceedings. The simple fact of the matter is that the applicants have an inherent interest in the outcome of the main application. The future of their granddaughter will be decided in that application. In saying that, I am mindful of the fact that interest of the minor child is of paramount importance in these proceedings, and it may well be that the intervention of the applicants may well add value to the enquiry relating to the interest of C.

[18]. Accordingly, I intend granting the applicants leave to intervene as respondents in the main application.

[19]. As far as costs are concerned, I am of the view that, all things considered, a fair order would be that costs should be in the cause

of the main application.

order

Accordingly, I make the following order:

1. The first and second applicants are granted leave to intervene in the main application under case number: 04647/2015 as fifth and sixth respondents respectively.
2. The first and second applicants shall deliver their notices of intention to oppose the main application within 5 (five) days from date of this order.
3. The first and second respondents shall serve on the attorneys of the applicants copies of any and / or all pleadings, notices and

processes filed in the main application by any and / or all parties to that application, within 5 (five) days from date of service of the applicants' notice of intention to oppose.

4. The first and second applicants shall deliver their answering affidavits within 15 (fifteen) days from date of delivery by the first and second respondents' attorneys of copies of the processes as per prayer 4 above.
5. The cost of this application shall be cost in the cause of the main application.

L ADAMS

Acting Judge of the High Court

Gauteng Local Division, Johannesburg

HEARD ON: 11th May 2016

JUDGMENT DATE: 13th May 2016

FOR THE 1st & 2nd APPLICANTS : Adv M Sibeko,

INSTRUCTED BY: Sibanda Bukhosi Attorneys

FOR THE RESPONDENTS: Adv I Strydom

INSTRUCTED BY: Aliscia Brits Attorneys

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