

SOUTH AFRICA / JUDGMENT

MacMillan v Janse van Rensburg (67920/2015) [2017] ZAGPPHC 431 (12 April 2017) [2017] ZAGPPHC 431

COURT

North Gauteng High Court, Pretoria

BEFORE

ML Senyatsi

CASE / FILE NUMBER

67920/2015

Source: saflii.org · Research copy typeset by Esheria. Not court-issued or certified.

Source record

REPUBLIC
OF SOUTH AFRICA
IN
THE HIGH COURT OF SOUTH AFRICA
GAUTENG
DIVISION, PRETORIA
CASE
NUMBER 67920/2015

DATE: 12/4/2017
In

the matter between: WILLIAM
LAWSON
MACMILLAN
APPLICANT
and
HERMAN
JANZEN VAN
RENSBURG
RESPONDENT

JUDGMENT

SENYATSI AJ:

[1]. This is an application in terms of Rule 30A brought by the respondent on the ground that the applicant has failed to comply with a Rule 7(1) notice.

BACKGROUND

[2]. The applicant instituted proceedings against the respondent for payment of R2 917 709.10 ("the main application")

based on two acknowledgements of debts concluded in favour of the applicant on 9 March 20.12 and 23 February 2015 respectively.

[3]. Upon service of notice of motion in the main application, the respondent served a notice of intention to oppose the application and notice in terms of Rule 35(12) which called upon the applicant to provide the original documents referred to in the founding affidavit of the applicant. These documents were annexures "BM1" and "BM2" consisting of two acknowledgements of debts. The notice further sought proof of payments of the amounts allegedly loaned and advanced, CIPC records relating to Sentio Building (Pty) Ltd, contract relating to the transfer of property, the first and final liquidation and distribution account relating to the deceased wife of the applicant.

[4]. The applicant served his reply to the respondent's notice in terms of Rule 35(12). In his reply, the applicant stated that the original acknowledgement of debt "BM1" was in the possession of his attorneys of record and was available for inspection during office hours. The applicant stated that he did not have the original acknowledgement of debt "BM2" as it was furnished to him by the respondent in electronic form. He annexed proof of payment and the required CIPC search, a copy of the first and final liquidation and distribution account of his deceased wife's estate and responded that payment was made by Steel Test (Pty) Ltd of which he was the controlling shareholder and chief executive officer. The respondent was dissatisfied with the reply and served the applicant with Rule 7 (1) notice which sought to challenge the applicant's authority to act on behalf of Steel Test (Proprietary) Ltd ("Steel Test").

[5]. From the evidence adduced on papers, it is not in dispute that two payments of R1 million each were made by Steel Test and it is not in dispute that these payments were made on behalf of the applicant who, at the time was the principal shareholder and chief executive officer of Steel Test. The applicant and the respondent knew each other quite well. The respondent acted as the attorney of the applicant and even handled the applicant's wife's deceased estate.

[6]. The respondent persisted with his claim that the applicant has failed to comply with notice in terms of Rule 7(1) and that as a consequence the main application should be dismissed with costs. In terms of Rule 30A.

[7]. Mr. Bitter submitted on behalf of the applicant that the application in terms of Rule 30A should be dismissed with costs. He contended that the Rule 7(1) notice served by the respondent was used as a delaying tactic to avoid the claim against him by the applicant and that the respondent was avoiding providing a defence on merits.

[8]. It was submitted on behalf of the respondent by Mr. Thompson that the application in terms of Rule 30A ought to be favourably considered by Court and that the main application should be dismissed with costs. His basis is that the applicant, in the main application, has failed to allege a cession of claims on a loan account in that payments were made by third parties to the respondent. He further argued that the demand by the respondent in the main application that the applicant should prove his authority to act on behalf of third parties is legitimate.

[9]. The issue for determination is whether or not there is merit to the application in terms of Rule 30A.

THE LEGAL PRINCIPLES

[10]. It is important to restate what Rule 7(1) provides which is as follows:

"(1) Subject to the provisions of sub-rules (2) and (3) a power of attorney to act need not be filed, but the authority of anyone acting on behalf of a party may, within 10 days after it has come to the notice of a party that such person is so acting, or with the leave of the court on good cause shown at any time before judgment, be disputed, whereafter such person may no longer act unless he satisfied the court that he is authorised so to act, and to enable him to do so the court may postpone the hearing of the action or application."

[11]. In my view, Rule 7(1) is only concerned, in the main, with the mandate of an attorney to act in instituting or defending legal proceedings on behalf of a party.[1]

[12]. It is apposite that the purpose of filing a power of attorney is to prevent a person whose name is cited in an application or proceedings from thereafter repudiating the process by denying his authority for the issuing of such a

process. This principle has been acknowledged by courts in various judgments.[2]

[13]. Mr. Bitter contended that the applicant in the main application has not purported to act on behalf of any third party, and that as a consequence, the insistence on Rule 7(1) compliance is misplaced. The applicant is acting on his own based on the two acknowledgements of debt. I do concur with Mr. Bitter on this point.

[14]. On proper perusal of the main application, it is evident that the applicant is acting on his own based on the two acknowledgements of debts. No other party has been cited in the main application proceedings. It is therefore improper to contend that the applicant

does not have authority to act on behalf of a third party who is not cited.

[15]. It has been submitted by Mr. Thompson that unless the applicant avers and proves that the payments were made on his behalf by Steel Test, his authority can be challenged. As already indicated, I do not agree with this contention. It has not been averred by the applicant that he acts on behalf of any third party. On the contrary, the applicant in his papers paints a picture of how the payments were made and more importantly, how the respondent even paid some of the money to the applicant and this has not yet been challenged by the respondent except the attempt to use Rule 7(1) notice as a way of frustrating the claim by the applicant. The authorities referred to by Adv.

Thompson are not applicable in the present case. I was referred to in *Saunders Valve Co Ltd v Insamcor (Pty) Ltd*[3]. It is without doubt that "It is trite law that in motion proceedings the affidavits serve not only to place evidence before court but also to define the issues before the parties. In so doing the issues between the parties are identified. This is not only for the benefit of the court but also, and primarily, for the parties. The parties must know the case that must be met and in respect of which they must adduce evidence in affidavit".

[16]. I am of the view, the respondent has fully provided sufficient information to the applicant in reply to Rule 35(12) to enable the applicant to provide the answering affidavit and to raise whatever defence he may have at his disposal. As a consequence, I do not agree that he has failed to reply

adequately to the notice. Consequently, the application in terms of Rule 30A cannot succeed.

ORDER

[17]. Accordingly, the following order is made:-

1. The application for dismissal of the claim by the applicant's in terms of Rule 30A dismissed with costs.

ML SENTATSI

ACTING JUDGE OF THE HIGH COURT

Date of hearing :

Date of judgment :

Counsel for the applicant : Mr. JJ Bitter

Attorney for the applicant : Darryl Ackerman Attorneys

Counsel for the respondent : Mr. CE Thompson

Attorney for the respondent : Martin Van Vuuren Attorneys

[1] See *SA Allied Workers' Union v De Klerk* 1990 (3) SA 425.

[2] See Estate Matthews v Els 1955 (4) SA 457 (C) at 459; United Dominion Corporation (SA) Ltd v Greyllngs' Transport 1957 (1) SA 609 (T) at 614; Vlljoen v Federated Trust Ltd 1971(1) SA 750 (D) at 752; Eskom v SOWeto City Council 1992 (2) SA 803(W) at 705 E - F.

[3] 1985 (T) 146(T) at 149 (T)

Source & reproduction note

Judgment wording, source notices and original paragraph numbers are retained. Esheria supplies the layout and this PDF's page numbers; these are not the source pagination. This is a research copy, not an official or certified court document. Check quotations, citations and publication restrictions against the original source before relying on it.

ORIGINAL SOURCE <https://www.saflii.org/za/cases/ZAGPPHC/2017/431.html>

CASE PAGE <https://chat.esheria.ai/case-law/south-africa/macmillan-v-janse-unknown-topic-agpphc-2017>

Prepared on 13 October 2026 · Esheria