

SOUTH AFRICA / JUDGMENT

Mafune v LTT Brake and Clutch/The Manager (Rev17/2023) [2023]

ZALMPTHC 4 (17 March 2023)

[2023] ZALMPTHC 4

COURT

Limpopo High Court, Thohoyandou

BEFORE

Kganyago

CASE / FILE NUMBER

Rev17/2023

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REPUBLIC OF SOUTH

AFRICA

IN THE HIGH COURT OF

SOUTH AFRICA

LIMPOPO LOCAL

DIVISION, THOHOYANDOU

CASE NO: Rev17/2023

(1)REPORTABLE:YES/NO

(2) OF INTEREST TO THE

JUDGES: YES/NO

(3) REVISED.

DATE:

SIGNATURE:

In

the matter between:

MASALA

EDWARD MAFUNE

APPLICANT

And

LTT

BRAKE AND CLUTCH/THE MANAGER

RESPONDENT

JUDGEMENT

KGANYAGO J

- [1] The applicant has instituted an action in the small claims court against the respondent claiming R15 900.00. The applicant is claiming against the respondent money for a booster which allegedly busted during the testing of the applicant's Mercedes Benz 350 ML by an employee of the respondent. The applicant had booked that vehicle for installation of the front brake pads. The respondent had defended the applicant's action, and has filed a counter-claim of R2 850.00 for alleged services rendered. The matter came before commissioner Z Moosa who dismissed the applicant's claim, whilst the respondent succeeded with its counterclaim. The applicant has now launched a review of the commissioner's decision to dismiss his claim.
- [2] During the trial the applicant testified that on 14th January 2022 he took his vehicle to the respondent to fix the front brake pads. The respondent attended to the said vehicle and the applicant was charged R2 990.00 for services rendered which he had duly paid. The applicant drove the vehicle for about 15 metres within the respondent's premises, applied brakes and was not satisfied with the work done on his vehicle. The applicant reversed his vehicle and asked one Barend Prinsloo the person in charge at the respondent's premises whether they have tested the vehicle. Prinsloo responded in a rude way and told the applicant that he had tested the vehicle.
- [3] Prinsloo decided to test the vehicle in the presence of the applicant. At Laerskool Prinsloo applied harsh brakes, stopped the vehicle and told the applicant that he had heard something blasting. A sign appeared on the vehicle's dashboard showing what was the fault on the vehicle. They went back to the respondent's premises. The respondent removed the part from the vehicle and told the applicant that they will get the said part from Maema. The respondent further told the applicant to buy the part from Mercurius, and that it was costing R15 000.00. The respondent pleaded with the applicant to go to the respondent's office. The applicant refused to go into the office as his vehicle was in motion and he had paid for the labour for putting the brake pads. A certain coloured person came to the applicant and apologized. That coloured person told the applicant that he is the one who had applied brakes harshly.
- [4] The respondent has testified and stated that it had tested the applicant's vehicle. As they were testing it they heard a popped noise, and the brake booster split. One Farouk reported that, and also took out the booster. Farouk saw that it was rusted and that the clamps could not hold it together. They informed the applicant about the problem. When they put on the brake pads, they did not work close to the master cylinder or booster. They only top up the brake fluids.

- [5] Malima who specialise in Mercedes did not have the booster on stock. The respondent shopped around and found one in Johannesburg for R2 850.00. They explained that to the applicant and that he can come to the shop, and further that they will fit that part without charging him labour. That was done in order to settle the matter. The applicant refused to accept the offer. The respondent stated that it is having 24 years of experience in brake and clutch business. The clamp that was rusted on the booster was the cause of the part's failure. After they did their work, they tested the vehicle and the brakes were working, but that it was the booster that had failed. Under cross examination the applicant stated that he had refused the respondent's offer because the booster was not removed in his presence.
- [6] The grounds of the applicant's review are that (i) on 16th February 2011 he had beaten the commissioner because the commissioner was representing Bergvlei who had damaged his vehicle, and Bergvlei was found guilty of having stolen the parts of his motor vehicle; (ii) that Bergvlei was forced to pay the applicant all the damages for the car by Louis Trichardt court, and that the commissioner failed to defend Bergvlei; (iii) that it is clear to the applicant that the commissioner took a wrong decision because it is the second time when the commissioner had to stand in the magistrate court to defend his client and take a wrong decision, because the commissioner has taken the applicant as his enemy, and he knows the applicant very well; and (iv) the commissioner was not supposed to have proceeded with the case because they were meeting for the second time for the very same cases of Mercedes Benz cars damaged. The commissioner was supposed to have recused himself from the case as he cannot continue with the case of his enemy.
- [7] The commissioner in his statement has conceded that the applicant is known to him in that on a previous occasion he had adjudicated in a case in which the applicant was the plaintiff and he had granted judgment in favour of the applicant. The commissioner has further stated that he only knows the respondent who is a business operating in their town, and further particulars of the respondent are unknown to him, and that it was for the first time he adjudicated over a matter in which the respondent was involved. That he had adjudicated over the current matter without any preconceived bias or prejudice which might have influenced his judgment. That no application for his recusal was brought, and that he had observed all the protocols pertaining to trial procedure before the trial commenced. He therefore had no reason to recuse himself from the matter despite the fact that the applicant was known to him as a member of the public over whose matter which he had previously adjudicated upon.
- [8] The commissioner further stated that each case is decided on its own merits. He is not aware of any history or bad tensions that exist between himself and the applicant which have influenced his judgment, taking into consideration that the applicant received a positive judgment in a previous matter over which he had adjudicated upon. That it seems as if the applicant is lingering under a misconception that the commissioner should represent the plaintiff's case instead of being a presiding officer impartially adjudicating over the matter. He had fully explained all the court procedures before the commencement

of the trial to both parties, and further that the applicant was previously engaged in a similar trial before him, therefore, the applicant was quite conversant with the procedure. That the applicant is disgruntled that the judgment was granted not in his favour.

[9] In terms of section 45 of the Small Claims Court Act[1] (Act) a judgment or order of the court is final and no appeal lie from it. The only way to challenge the judgment or order of the court is by way of review. In terms of section 46 of the Act, the grounds upon which the proceedings of the court may be taken on review are

(i) absence of jurisdiction on the part of the court; (ii) interest in the cause, bias, malice or the commission of an offence referred to in Part 1 to 4, or section 17, 20 or 21 (in so far as it relates to the aforementioned offences) of Chapter 2 of the Prevention and Combating of Corrupt Activities Act, 2004, on the part of the commissioner; and (iii) gross irregularity with regard to the proceedings.

[10] According to the applicant's application, his grounds of review are that the commissioner was biased in adjudicating the matter against him. In *President of the RSA v South African Rugby Football Union*[2] the Court said:

"From all the authorities to which we have been referred by counsel and which we have consulted, it appears that the test for apprehended bias is objective and that the onus of establishing it rests upon the applicant. The test for bias established by the Supreme Court of Appeal is substantially the same as the test adopted in Canada. For the past two decades that approach is the one contained in the dissenting judgment by De Grandpre J in Committee for Justice and Liberty et al v National Energy Board:

'... the apprehension of bias must be a reasonable one, held by reasonable and right minded persons, applying themselves to the question and obtaining thereon the required information... [The] test is "what would an informed person, viewing the matter realistically and practically – and having thought of the matter through – conclude"'

[11] According to the applicant the commissioner was representing one Bergvlei in a criminal matter in which the applicant was the complainant. That matter involved the same vehicle of the applicant in which Bergvlei had stolen some of its parts. Bergvlei who was allegedly been represented by the commissioner was convicted and ordered to pay the applicant the damages which he had suffered. The commissioner in his statement does not dispute this allegation by the applicant.

[12] Bergvlei was not a party to the matter that was adjudicated by the commissioner. The current matter was a separate incident from the Bergvlei matter. Even though it involves the same vehicle, the facts are not the same and the parties are not the same. The applicant after that Bergvlei incident had appeared before the same commissioner who granted judgment in his favour. It can therefore not be said that the commissioner was having confidential information prior to the adjudication of the matter which were prejudicial to the applicant's case or that the commissioner had prior knowledge of the facts of the case that he was adjudicating upon.

[13] There is no evidence that the respondent was the client of the commissioner or that they were having any dealings of some kind. In my view, the applicant is not happy that the commissioner had ruled against him, and is trying to appeal that decision through the back door in the form of a review. The applicant's apprehension of bias was therefore not reasonable taking into consideration the facts of this matter in its totality, and also the fact the applicant appeared before the same commissioner after the Bergvlei matter, and judgment was granted in his favour. Therefore, the review on the listed grounds have no merit and stand to be dismissed.

[14] In the result the following order is made

14.1 The applicant's application for review is dismissed.

14.2 There is no order as to costs.

JUDGE OF THE HIGH COURT OF SOUTH

AFRICA, LIMPOPO DIVISION THOHOYANDOU

Date delivered : 17th March 2023

[1] 61 of 1984

[2]

[1999] ZACC 9; 1999

(4) SA 147 (CC) at para 45

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