
SOUTH AFRICA / JUDGMENT

Magabe v and Another v Color Black Projects Management CC; In re: Color Black Projects Management CC v Mafuri Turnkey Accelerated Construction (Pty) Ltd (36032/2017) [2017] ZAGPPHC 588 (11 September 2017)

[2017] ZAGPPHC 588

COURT

North Gauteng High Court, Pretoria

BEFORE

Hughes

CASE / FILE NUMBER

36032/2017

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IN THE HIGH COURT OF SOUTH AFRICA

GAUTENG DIVISION, PRETORIA

Case Number: 36032/2017

Date: 11/09/2017

Reportable: No

Of interest to other Judges: No

In the matter between:

MORWANA BERNARD MAGABE 1st APPLICANT

KHUTSO MAGABE 2ND APPLICANT

and

THE COLOUR BLACK PROJECTS RESPONDENT

MANAGEMENT CC (in liquidation)

IN RE:

THE COLOUR BLACK PROJECTS APPLICANT

And

MAFURI TURNKEY ACCELERATED CONSTRUCTION RESPONDENT

(PTY) LTD REGISTRATION NUMBER: 1997/017705/07

Coram: HUGHES J

REASONS

HUGHESJ

- [1] I encountered this urgent application on my roll on 29 August 2017.
- [2] This is an application to rescind the entire court order granted on 4 August 2017.
- [3] The order on 4 August 2017 granted the final winding up of the respondent, Mafuri Turnkey Accelerated Construction (PTY) LTD, in the main application.
- [4] The first applicant in this rescission application is a shareholder in Mafuri Turnkey Accelerated Construction (PTY) LTD (Mafuri). In the first applicant's founding affidavit he stated that Mafuri only obtained notification of the winding up order on 22 August 2017 and as such this rescission application is brought timeously.
- [5] The reasons advanced by the first applicant for setting this matter down on the urgent roll instead of the ordinary motion court roll are set out below:
 - (a) The legal standing of Mafuri in light of the status that it is insolvent;
 - (b) The first applicant anticipates that the aforesaid negative status will affect Mafuri's existing and positive business relations with its various clients, the suppliers and staff when they learn about the liquidation; and
 - (c) Lastly, that the first applicant and Mafuri require an opportunity to oppose the liquidation proceedings.
- [6] The Colour Black Projects Management CC, is the applicant in the main application and the respondent in this rescission application. In the founding papers for the liquidation, the applicant/respondent sets out, that as far back as 11 October 2016, it engaged with Mafuri and its attorney about the pending winding up proceedings. An agreement was reached between the parties that Mafuri was indebted to the applicant/respondent in the amount of R422 620.21 and on 11 October 2016, Mafuri agreed and undertook to pay the debt off in 10 equal instalments.
- [7] Nothing was forthcoming from neither Mafuri nor its legal representatives until 2 May 2017. This is when Mafuri's attorney wrote to the respondent's attorney that:

"

4. Your notion that our client is insolvent is vague and unsubstantiated and any liquidation application shall be successfully

opposed with a punitive cost order against your client".

- [8] The eventuality was the order of 4 August 2017 duly winding up Mafuri.
- [9] In my view, there are no reasons advanced by the first applicant for this matter to be heard on an urgent basis. This is clearly a matter that ought to proceed by way of the ordinary motion court roll. From the information before me Mafusi and its attorney were well aware that these proceedings would be initiated by the respondent, well in advance. The respondent has attached
- correspondence, and the like, illustrating that the papers had been served on the first applicant as a shareholder.
- [10] In the circumstances this application for rescission is not urgent and as such is struck off the roll for want of urgency with costs.

W. Hughes

Judge of the High Court Gauteng, Pretoria

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