

SOUTH AFRICA / JUDGMENT

Malie N.O and Others v Chisha and Others (101188/2015) [2020] ZAGPPHC 113 (17 March 2020)

[2020] ZAGPPHC 113**COURT**

North Gauteng High Court, Pretoria

BEFORE

Davis

CASE / FILE NUMBER

101188/2015

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

Source record**IN****THE HIGH COURT OF SOUTH AFRICA****GAUTENG****DIVISION, PRETORIA****(1)****REPORTABLE:**

YES/NO

(2)

OF

INTEREST TO OTHER JUDGES: YES/NO

(3)

REVISED

CASE NO:

101188- 2015

DATE:

2020. 2. 4

17/3/2020

In

the matter between

VUSAN I FRANCIS

MALIE N. O & OTHERS

and

SHIPHRA CHISHA

AND OTHERS

JUDGMENT

DAVI S, J:

This is now the afternoon of the 7th day of the trial of this matter set down for ten days. More than a day ago the plaintiff has concluded its case.

What happened in the interim was that the matter stood down at the request of third, fifth and sixth defendants in order to enable them to launch applications for absolution from the instance.

They have since done so orally supported by written heads of argument. This was by Mr Vere the third defendant who acts in person as well as by counsel for the fifth and sixth defendants. I have had regard to all the principles applicable to the question of absolution from the instance at this stage of a trial.

The most often quoted principle is set out in *Gascoine v Paul and Hunter Transvaal Provincial Division* Law Reports 1917, 170. At 173 the learned judges De Villiers, JP and Mason, J said the following:

" At the close of the case for the plaintiff therefore the question which arises for the consideration of the Court is: is there evidence upon which a reasonable man might find for the plaintiff."

After reference to some earlier cases, the judgment continues.

The question therefore is at the close of the case for the plaintiff, was there a *prima facie* case against the defendant Hunter, in other words was there such evidence before the Court upon which a reasonable man might, not should , give judgment?"

The issue of a *prima facie* case has also been dealt with by subsequent cases. Notably in *Ruto Flour Mills (Pty) Limited v Adolfson* (2) SALR 1958 (4) SALR 307 (TPD) the learned judge said the following after reference to *Gascoine v Paul and Hunter* at 309(0) to (G):

"At the close of the case for the plaintiff therefore the question which arises for the consideration of the Court is, is there evidence upon which a reasonable man might find for the plaintiff."

If the defendant does not call any evidence but closes his case immediately the question for the Court would then be: is there such evidence upon which the Court ought to give judgment in favour of the plaintiff.

If the evidence is not only not convincing but actually found by the trial Court to be an utter fabrication (see: *Cats v Bloomfield* 1914 TPD 397; *Theron v Bear* 1918 CPO 443, *Hutchinson v Fourie* 1930 TPD

740) or if the pure fact that it is too vague and contradictory to serve as proof for the question in issue, then it would be evidence

upon which a reasonable man would not find and the Court would be perfectly justified in granting absolution from the instance at the close of the case for the plaintiff.”

The application for absolution by Mr Vere deals with the issue as to whether he was a joint wrongdoer in respect of the delicts involving the payments of bribes to entities identified by Mr Chisha.

Mr Vere was drawn into this question by way of the evidence of Mr Skeen who testified about a second meeting with Mr Vere and one at which he indicated that it was not within his capability to ensure that the 9th defendant receives a contract from the plaintiffs but he was a person who could ensure that they would not get such a contract. That was the statement attributed to him. The other statement attributed to him was that when Mr Chisha had referred to him as a partner and a question arose as to whom the money, then referred to as a "commission", should be paid, Mr Vere would have said that Mr Chisha would furnish the necessary invoices.

Mr Vere, acting in person, cross-examined Mr Skeen very competently and also established via the evidence of the first defendant who after a settlement with the plaintiffs testified in the plaintiff's case, that Mr Vere was in fact not able to influence any decision and Mr Vere argued that on that principle the whole proposition that he would be part of a solicitation of a bribe should fall away.

Apart from the weight of this argument the remainder of the evidence of Mr Skeen do not satisfy to my mind the test that a reasonable Court or a reasonable man having to make a decision as a Court , would come to the conclusion that it might give judgment thereon.

One must bear in mind as well that if that was the only evidence to stand, then a Court at the end of the case ought not to give any finding against Mr Vere. There is no indication that this would not be the position regarding his denial as set out both in his cross-examination and in his statement which formed part of the record and to which reference had been made as well as the absence of indication of any other evidence.

Taking into account therefore the unsatisfactory , vague and inconclusive nature of the evidence regarding the accusations made against Mr Vere and his limited participation, am of the view that his application for absolution from the instance should succeed .

Mr Vere had acted in person in the trial and I am not aware of the status or extent of costs or expenses incurred by him which could justifiably be claimed but see no reason why costs should not follow the event.

Regarding the application of the fifth and sixth defendants they, if one were to disregard the issue of the bribes that I have referred to, were otherwise drawn into the fray in more than one manner.

The fifth defendant was a shareholder of the ninth defendant and Voluset. He was also asked for advice regarding the structuring of asset acquisition or how assets were to be dealt with in the contract that Volufon as Augment's successor, would conclude with the plaintiffs.

He was clearly not a disinterested party in that regard. From thereon his participation in various meetings, proposals for business, participation by the ninth defendant in the later SEAS group during the second half of 2012 all relate to actions taken or to be taken by the ninth defendant being the proposed fountain of money for the participants in the SEAS group of which the fifth defendant's company (of which he was the controlling mind) Serendipity, as it is referred to in the papers, form part of.

Similarly in this fashion, the sixth defendant was drawn into the whole scheme of the Volufon fountain of money and in Particular the SEAS group by the fifth defendant and participated therein.

Having regard to the conclusion to which I have come it would be improper to further deal with the various aspects and the possibility of liability in terms of Section 424 of the Companies Act as claimed by the plaintiff.

Suffice to say that there is on a conspectus of the evidence and the documents to which the witnesses had referred, sufficient grounds

upon which a Court might find against these two defendants in favour of the plaintiff.

Accordingly the application for absolution from the instance of these two defendants should fail. The orders are therefore as follows:

- (1) The application by the third defendant for absolution from the instance against him is upheld with costs.
- (2) The application by the fifth and sixth defendants for absolution from the instance against them is refused with costs.

Mr Vere that means that you are then no longer a party and can be excused from the remainder of the proceedings.

DAVIS, J

JUDGE OF THE HIGH COURT

GAUTENG DIVISION, PRETORA

DATE REVISED: 17/03/2020

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/2020/113.html>

CASE PAGE <https://chat.esheria.ai/case-law/south-africa/malie-no-and-others-v-chisha-unknown-topic-agpphc-2020>

Prepared on 11 October 2026 · Esheria