

SOUTH AFRICA / JUDGMENT

Maquassi-Hills Contractors v Oxy Trading (Pty) Ltd t/a D L Construction and Another (KPUM35/2018) [2018] ZANWHC 76 (13 December 2018)

[2018] ZANWHC 76

COURT

North West High Court, Mafikeng

BEFORE

A M Kgoele

CASE / FILE NUMBER

KPUM35/2018

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IN THE NORTH WEST HIGH COURT

MAHIKENG

CASE NO. KPUM35/2018

In the matter between:

MAQUASSI-HILLS CONTRACTORS

Applicant

AND

OXY TRADING (Pty) Ltd t/a D L CONSTRUCTION 1ST Respondent

MAQUASSI-HILLS LOCAL MUNICIPALITY

2nd Respondent

URGENT APPLICATION

KGOELE J

DATE OF HEARING

: 13 December 2018

DATE OF JUDGMENT : 13 December 2018

FOR THE APPLICANT : Mr Letsile

REASONS

IN A POINT FORM

KGOELE J:

A. THE PAPERS

- [1] The founding affidavit is defective because it was not properly commissioned.
- (a) Deponent signed it at Wolmaranstad;
 - (b) The Commissioner of Oath does not indicate where it was signed, but his/her stamp indicates that he/she is practising as an advocate at 27 Clement Street at Klerksdorp;
 - (c) Deponent indicated that he signed the founding affidavit on the 30 July 2018;
 - (d) The Commissioner of Oath indicated that the affidavit was signed on the 4 December 2018;
 - (e) The deponent indicated in the affidavit that he is a male person. The Commissioner is not sure of this because he/she refers to him as a she on two occasions.

Therefore there is no proper application before me / application is defective.

B. EX PARTE APPLICATION

- (a) There are no reasons on paper why the application cannot be served on respondents and/or basis to justify an application to have been brought ex-parte and to be heard as such.
- (b) No provision made in the papers of the granting of a rule nisi and the return date thereof.

Therefore the application is defective and cannot be granted on an ex parte basis.

C. URGENCY

- (a) No sufficient basis laid for the matter to be heard on an urgent basis.
- (b) The closing date of the tender in question was on the 30 November 2018 according to their factual averments.
- (c) The confusion about the date on the founding affidavit makes

it difficult to discern when the application was made. Whereas the affidavit was signed on 30 July 2018, the notice of motion was signed on the 6 December 2018. No explanation of what made them to only make an application on the 6th when the affidavit was signed in July, and worse, when they had a meeting according to their papers with the respondent regarding this issues on the 29 November 2018. The urgency seems to be self-created.

D. MERITS

(a) The requirements of an Interdict have not been sufficiently dealt with all in the application or founding affidavit, Some were not even referred to at all.

(b) The prospect of success of the intended review application has not been illustrated in the papers before Court.

E.

CONCLUSION

There is a myriad of defects in this matter. It is ill conceived and cannot be sustained and resuscitated in its current form. I am of the view that it should be dismissed.

ORDER

The application is dismissed.

A M KGOELE

JUDGE OF THE HIGH COURT

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Prepared on 13 October 2026 · Esheria