

SOUTH AFRICA / JUDGMENT

Moore Stephens B & W v City of Matlosana Municipality (KP534/2018) [2020] ZANWHC 40 (28 August 2020) [2020] ZANWHC 40

COURT

North West High Court, Mafikeng

BEFORE

Gura

CASE / FILE NUMBER

KP534/2018

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IN

THE HIGH COURT OF SOUTH AFRICA

NORTH

WEST DIVISION, MAHIKENG

CASE

NO.: KP534/2018

In

the matter between:

MOORE
STEPHENS B & W
Plaintiff/Respondent
and
THE
CITY OF MATLOSANA MUNICIPALITY
Defendant/Applicant
APPLICATION
FOR LEAVE TO APPEAL
GURAJ
DATE
OF HEARING
29
MAY 2020
DATE
OF JUDGMENT
28 AUGUST 2020
FOR
THE APPLICANT
ADV G ACKERMAN
FOR

THE RESPONDENT
ADV N FERRIS

JUDGMENT

GURA J.

Introduction.

[1] This is an application for leave to appeal against the judgment of this Court in which summary judgment was granted against the defendant (City of Matlosana Municipality) for payment of R5 108 172.75 plus costs to the plaintiff (Moore Stephens B & W).

Grounds of appeal.

[2] The grounds of appeal for this application are as follows:

"2. In the application for leave to appeal, the following grounds, as envisaged in section 17 (J)(a)(i) of the superior Court Act will be relied upon.

2.1 The honourable Court, with respect, misdirected itself in not finding that the defendant illustrated that it has a bona fide defense and that the intention to defend is not entered solely for purposes of delay.

2.2 That the honourable Court, with respect, misdirected itself by refusing to accept that the rebate of R41 000 000.00 was or would have been occasioned by the efforts of the Defendant's employees.

2.3 That the honourable Court, with respect, misdirected itself by not granting the defendant leave to defend in circumstances where plaintiff failed to show that if:-

- re-performed detailed Municipal Infrastructure Grant ("MIG ") registers per grant;
- investigated all projects, where the actual expenditure incurred by the Applicant exceeded the original budget approval from National Treasury;
- if identified reasons for additional costs;
- failed to produce to the Court documents supporting its claim for summary judgment;
- to show how, in light of Annexure "AO1 ", Plaintiff could have assisted the defendant in preparing a submission to National Treasury;
- that Plaintiff performed statutorily regulated functions relating to roll overs and set off Section 22 of the Divisions of Revenue Act: DORA refers;

-the honourable Court misdirected itself by failing to consider or adequately consider that, whereas defendant does not deny receipt of R41 000 000.00 from National Treasury, defendant asserts that this payment was consequent upon defendant's submissions, prepared and presented by its own official(s) to National Treasury.

3. In this application, Applicant will inform the Court that Applicant will also rely on Section 17 (1) (a)(i) and/or (iii) of the Supreme Court Act, i.e. that there are other compelling reasons why the appeal should be heard.

3.1 The compelling reasons referred to in this application is the fact that this case is of material importance and that it is in the interest of justice that the legal approach to Summary Judgment applications be determined. "

Legal principles.

[3]

Section 17 (1)(a) of the Superior Courts Act[1] provides:

"(1) Leave to appeal may only be given where the judge or judges concerned are of the opinion that-

(a)

(i) the appeal would have a reasonable prospect of success; or

(ii) there is some other compelling reason why the appeal should be heard, including conflicting judgments on the matter under consideration;"

[4]

The approach which this Court has to adopted in an application for leave to appeal differs from what would have been the correct criteria prior to the coming into operation of the Superior Court Act, 2013. The current situation is that an applicant has a heavier burden to convince the . Court that there is a reasonable prospect that the appeal would (will) succeed. See in this regard The Mont Chevaux Trust v Tina Goosen & 18 Others[2] where the Court stated:

" It is clear that the threshold for granting leave to appeal against a judgment of a High Court has been raised in the new Act. The former test whether leave to appeal should be granted was a reasonable prospect that another court might come to a different conclusion, see Van Heerden v Cronwright & Others 1985 (2) SA 342 (T) at 343H. The use of the word "would" in the new statute indicates a measure of certainty that another court will differ from the court whose judgment is sought to be appealed against "

[5] More recently, the SCA in Rattan case[3] insisted that there should be a sound rational basis for granting leave to appeal. See in this regard para 34 where the Court held:

"There is a further principle that the court a quo seems to have overlooked

- leave to appeal should be granted only when there is a sound rational basis for the conclusion that there are prospects of success on appeal..... "

Reasons

for granting summary judgment.

[6] At paras 30 to 32, I made the following remarks in the judgment sought to be appealed by the applicant:

"[30] The respondent avers that the payment of R41 Million by National Treasury to the respondent was due to no effort on the part of the applicant but it was due to efforts of the respondent's officers by making a recommendation as set- out in Annexure QA1. The respondent overlooks a very important aspect when dealing with Annexure QA1. This Annexure (QA1) was written in August 2018, some four months after Treasury, already in April 2018, had approved the reallocation of R41 Million to the respondent. Clearly, common sense and logic suggests that the decision of Treasury in April 2018 could never have been influenced by the contents of OA1 which was written in August 2018 by the respondent. In my view therefore, Annexure OA1 is irrelevant on the issue of what influenced Treasury to release the R41 Million in April 2018.

[31] The last issue is whether or not payment of R41 Million by Treasury to the respondent was due to any effort on the part of the applicant. Paragraph 9 of the particulars of claim reads:

"In respect of the invoices issued by the plaintiff to the defendant, of national Treasury making payment to the defendant, National Treasury also confirmed in writing, that an amount of 41 million rand was transferred and paid to the defendant, resultant from the services rendered by the plaintiff, annexed hereto as annexure B. "

Annexure B referred to below is a letter from National Treasury dated 26 April 2018. It reads:

"REPAYMENT OF UNSPENT CONDITIONAL GRANTS

Our letter dated 12 April 2017 has reference.

National Treasury has compensated the municipality as part of the 2017 National Adjustment Estimate process and the associated Government

Gazette No. 41519 published during 2018. An amount of R41 million for the Municipal Infrastructure Grant (MIG) has been allocated and transferred to the municipality.

The R41 million allocated is as a result of the meeting held on 17 March 2017 with Mr. Moore Stephens regarding an error detected in the 2014/15 Annual Financial Statements which resulted in "double-deduction " of the MIG transferred by the National Treasury.

In terms of the process conducted by the Department of Cooperative Governance as a department that administrates the grant, your

municipality must comply with the conditions set in the Division of Revenue Act Framework and the approval processes regarding projects available for implementation as prescribed in your implementation plan.

Kind regards ,

JAN HATTINGH

CHIEF DIRECTOR: LOCAL GOVERNMENT BUDGET ANALYSIS DATE: 26/04/2018

Cc: Office of the Auditor General"

[32] It is my view therefore that the respondent has no bona fide defence to the applicant's claim. It was due to the reasons aforesaid that summary judgment was granted against the respondent with costs."

[7] Under normal circumstances, it should be the Municipality (applicant) who certifies in writing that the service provider (the respondent) has carried out the tasks which he/it was supposed to undertake, satisfactorily. Only after such a certificate has been issued by the Municipality would one say, the respondent should receive his R41 000 000.00. In casu there is no such certificate from the applicant. In fact, the applicant's case is explicitly that the respondent has not done anything to justify a payment of R41 million rand.

[8] Surprisingly, it is Treasury who issued annexure B to certify that the work was properly done by the respondent and therefore it is entitled to R41 million rand. What is bound to raise eyebrows with annexure B is that Treasury says the respondent is entitled to R41 million rand for a meeting he (respondent) held with Treasury in one day. So this respondent has to earn R41 million rand for a single day's service. What a high price!

[9] I am therefore of the view that there are reasonable prospects that the appeal will succeed.

Order.

[10] Consequently,

- (i) The application for leave to appeal is granted;
- (ii) The appeal to serve before the Full Court of this Division;
- (iii) Costs shall be costs in the appeal.

SAMKELO GURA

JUDGE OF THE HIGH COURT

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[1] Act 10 of 2013.

[2] 2014 JDR 2325 LCC at para 61.

[3] Four Wheel Drive Accessory Distributors CC v Rattan NO 2019 (3) SA 451 (SCA).

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Prepared on 12 October 2026 · Esheria