

SOUTH AFRICA / JUDGMENT

**Moselane v Voltex (Pty) t/a Lighting Structures
and Atlas Group In Re Voltex (Pty) Ltd t/a Lighting
Structures and Atlas group v Moselane
(2054/2019) [2020] ZAFSHC 194 (5 November 2020)
[2020] ZAFSHC 194**

COURT

Free State High Court, Bloemfontein

BEFORE

Daffue

CASE / FILE NUMBER

2054/2019

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

Source record

IN

THE HIGH COURT OF SOUTH AFRICA,
FREE
STATE DIVISION, BLOEMFONTEIN

Case

No. 2054/2019

In

the matter between:

MOSELANE,
GOITSEONE JONAS
Applicant
and
VOLTEX
(PTY) LTD t/a LIGHTING STRUCTURES AND ATLAS GROUP
Respondent
IN

RE:

VOLTEX
(PTY) LTD t/a LIGHTING STRUCTURES
AND
ATLAS GROUP
Plaintiff
and
MOSELANE,
GOITSEONE JONAS
Defendant

CORAM: DAFFUE J
HEARD

ON: 5 NOVEMBER 2020

JUDGMENT

BY: DAFFUE J

DELIVERED ON: 5 NOVEMBER 2020

I

INTRODUCTION

- [1] A creditor launched application proceedings under case number 2054/2019 against an individual and the trustees of a trust to claim money judgments based on their alleged indebtedness as sureties. The case against the trustees was dismissed and the case against the individual was referred to trial. This is an application by the individual for the stay of the proceedings against him pending finalisation of appeal proceedings instituted by the unsuccessful creditor against the trustees of the trust.

II THE PARTIES

- [2] The applicant in this interlocutory application is Mr Goitseone Jonas Moselane (herein later referred to as “Moselane”), an adult male businessman residing in Bloemfontein.
- [3] Respondent in this application is Voltex (Pty) Ltd t/a Lighting Structures & Atlas Group (herein later referred as “Voltex”),

a company with its principal place of business situate at Johannesburg, Gauteng.

III THE RELIEF CLAIMED

- [4] Applicant claims the following relief in this opposed application:

“1. The proceedings instituted by defendant (sic) against the applicant under case number 2054/2019 be stayed, pending the finalisation of the appeal and any application for leave to appeal to the Constitutional Court and appeal thereto in the appeal by Voltex (Pty) Limited against the Trustees for the time being of the Moselane Family Trust under the Supreme Court of Appeal case number 411/2020.

2. The costs of this application be costs in the trial action under case number 2054/2019 unless the respondent opposes this application, in which event costs will be sought against the respondent.
3. Directing the grant of other and/or alternative relief.”

IV A HISTORICAL OVERVIEW OF THE LITIGATION BETWEEN THE PARTIES

[5] The following brief history of the litigation between the parties is recorded:

5.1 On 27 May 2019 Voltex instituted application procedure against Moselane, cited as 1st respondent and the trustees of the Moselane Family Trust, cited as 2nd respondent (“the Trust”), claiming judgment against Moselane, jointly and severally with the trustees of the Trust and Ikageng Electrical Contractors (Pty) Ltd (herein later referred to as “Ikageng”) in a total amount in excess of R10 000 000.00 and for judgment against the trustees of the Trust jointly and severally with Moselane and Ikageng for payment in the amount of R8 000 000.00. Interest and costs are claimed as well.

5.2 Moselane deposed to an answering affidavit in which he inter alia took certain points in limine, to wit the non-joinder and/or mis-joinder of the trustees of the Trust. A replying affidavit was filed and on 15 August 2019 Van Zyl J heard the opposed motion.

5.3 The following orders were made on 12 February 2020:

“[1] The application against the second respondent is dismissed, with costs.

[2] The adjudication of the alleged liability of the first respondent in favour of the applicant as surety and co-principal debtor in solidum (jointly and severally) with Ikageng Electrical Contractors (Pty) Limited (“Ikageng”) for the obligations (sic) of Ikageng to the applicant (as set out in prayers 1.1 to 1.19 of the Notice of Motion), is referred to trial.

[3] For purposes of paragraph 2 above:

3.1 The Notice of Motion stands as simple summons;

3.2 A declaration is to be filed within 1 month from date of this order; and

3.3 The Uniform Rules dealing with pleadings and the conduct of trials will thereafter apply.

[4] The costs of the application against the first respondent stand over for later adjudication.”

5.4 Voltex’s declaration was filed on 20 February 2020 to which Moselane pleaded on 16 March 2020. A replication was delivered on 23 March 2020 and request for further particulars for trial and responses thereto followed. The parties also held a pre-trial meeting in accordance with the provisions of rule 37(A).

5.5 During a pre-trial conference on 28 September 2020 I made certain directives, inter alia that Moselane’s intended application to stay the action be filed on/or before 9 October 2020 where after answering and replying affidavits had to be filed as directed and the opposed motion be set down for hearing on 5 November

2020. I also directed that if Moselane still intended to seek further discovery, a notice in terms of rule 35(3) shall be filed on or before 16 October 2020.

5.6 Van Zyl J dismissed the application against the trustees of the Trust on the basis that Moselane only signed the Deed of Suretyship relied upon by Voltex whilst there were three trustees in office at the time who, on the facts before the court neither signed the Deed of Suretyship, nor

authorised Moselane to sign on their behalf. Having been dissatisfied with the order dismissing the application against the trustees with costs, Voltex applied for leave to appeal which was refused by the court a quo on 21 May 2020. However, leave was granted by the Supreme Court of Appeal on 30 July 2020 to appeal to the Supreme Court of Appeal.

V THE PARTIES DIFFERENT APPROACHES TO THE APPLICATION FOR STAY

- [6] Moselane, represented by Adv R van der Merwe in the application before me, submitted that it is in the interests of justice that, in the event of Voltex being successful with its appeal, the matters against Moselane and the trustees of the Trust be heard in one trial by the same court as the causes of action against Moselane and the trustees arise from three separate documents which Moselane signed and of which he is the only person on behalf of himself and the Trust to be able to give any meaningful evidence. All three alleged separate deeds of suretyship arise from the same debt by Ikageng to Voltex and it would be expeditious for a court to hear the evidence and claims in respect of all three documents at the same time. The stay of the present action and the consequent delay will not cause grave prejudice to Voltex, but serious injustice and embarrassment may be caused to Moselane if the application is dismissed. It is also mentioned in the heads of argument, not prepared by Mr Van der Merwe, that the facts in this case are certainly exceptional insofar as Voltex decided to commence with proceedings in a consolidated application, obviously on the basis that it was also of the view that both matters should be dealt with at the same time by the same judge, but since then it had a change of heart.
- [7] Voltex, as represented by Adv N Segal, submitted that if Voltex's appeal is successful and if the matter is referred back to the High Court for adjudication of the liability of the trustees of the Trust, and if the separate matters are heard by separate judges of this division, a credibility finding against Moselane may not necessarily have a negative effect in the other matter. A witness' testimony may be accepted on a specific point, although rejected on a different point, and the same may apply in this case. The decisive issue is that Voltex's claims involve different parties, to wit Moselane on the one hand and the trustees of the Trust on the other.

VI EVALUATION OF THE EVIDENCE, AUTHORITIES AND SUBMISSIONS ON BEHALF OF THE PARTIES

- [8] In order to evaluate the evidence and submissions on behalf of the parties it is prudent to refer to some common cause facts:

8.1 Ikageng was a customer of Voltex and eventually became indebted to it in an amount of R10 148 241.49 which is not in dispute.[1]

8.2 Moselane was at all relevant times the managing member of Ikageng.

8.3 Voltex brought winding-up proceedings against Ikageng whereupon Ikageng instituted business rescue proceedings which stayed the winding-up proceedings.

8.4 Voltex instituted application proceedings for money judgments against Moselane and the trustees of the Trust jointly and severally in their alleged capacities as sureties for the debts of Ikageng. The liability of the Trust as surety is limited to R8 000 000.00 in the Deed of Suretyship dated 26 January 2017.

8.5 The claim against Moselane is based on two alleged suretyships signed by him in his personal capacity on 16 July 2014 and 30 June 2015 respectively.[2]

8.6 As mentioned, the alleged liability of the trustees of the Trust arises from the Deed of Suretyship signed by Moselane only (and not the other two trustees) on 26 June 2017.[3]

8.7 The first of the two alleged suretyships signed by Moselane is contained in a document containing written terms and conditions of sale and the relevant clause is found in clause 31 of the document. The second alleged suretyship is contained in paragraph 20 of a credit application form signed by Moselane dated 30 June 2015. The two documents were signed on different occasions, eleven months apart and different witnesses allegedly signed the documents. In the first instance a certain AC Nagel signed as witness and in the second instance two other witnesses whose signatures clearly differ from that of Nagel.

8.8 The period between the second and the third alleged suretyships is eighteen months. Unlike the first two documents, the third document is a self-standing Deed of Suretyship. Again, two different witnesses signed the document.

8.9 The cause of action against Moselane is ripe for hearing insofar as pleadings have been closed in line with the orders issued by Van Zyl J and furthermore, requests for further particulars for purposes of trial have been filed and responded to. There was another outstanding issue, to wit the alleged reliance by Moselane on further discovery in terms of rule 35(3), but not withstanding a directive by me in this regard, Moselane did not act accordingly. Mr Van der Merwe obtained instructions during his oral argument and confirmed applicant's firm instructions not to seek further discovery. Therefore, if this application is dismissed, nothing stands in the way of the parties to proceed on trial in which case trial dates during the second term 2021 will probably be allocated.

8.10 It is uncertain when the Voltex appeal will be heard by the SCA, but it might only be at the end of 2021 or beginning of 2022. There is the possibility of a further appeal to the Constitutional Court.

[9] The fact that Voltex decided to launch one application for the money judgments against Moselane as first respondent and the trustees of the Trust as second respondent is held against it by Moselane. If it was deemed convenient and expedient to launch one application, so the argument continues, there is no reason not to wait for the Voltex appeal to be finalised. If Voltex succeeds, both causes of action against Moselane on the one hand and the trustees of the Trust on the other should be adjudicated by the same judge. It is uncertain what the outcome of the appeal proceedings might be. Whichever party loses the appeal may decide to apply to the Constitutional Court for leave to appeal further. This may

cause a further delay of another two years.

- [10] In my view there is no reason why the present action against Moselane should not be allowed to continue forthwith and be finalised.

Moselane's main concern is that if a credibility finding is made against him by the presiding judge, such finding may well have a negative effect in the following action against the Trust. The argument is that if judge A holds that Moselane is a liar and grants judgment in favour of Voltex, judge B will necessarily find him to be untruthful and grant judgment against the Trust.

- [11] When there are two irreconcilable versions before the court in civil matters factual disputes are resolved by making findings on (a) the credibility of the various factual witnesses, (b) their reliability and (c) the probabilities.[4] A finding on the probabilities necessitates an analysis and evaluation of the probability or improbability of each party's version on each of the disputed issues.
- [12] Moselane has nothing to be concerned of. Even if an adverse credibility finding is made against him in the first trial, and he had to concede that during cross-examination in the second trial, or if the first judgment with such finding is available and presented in the second trial, the version of the first judge will be nothing but hearsay and/or opinion evidence that does not have to be accepted by the next judge. Even if the opinion is accepted to be correct in respect of the circumstances in the first case, this does not mean that the version presented in the second case should be rejected as well. It often happens that a court finds that a witness is credible in respect of certain facts, but not reliable or not to be believed in respect of another factual scenario in the same case. Also, as indicated supra, the probabilities must be analysed and evaluated in order to come to a final conclusion. I agree with the Skeen, concluding as follows:[5]

"The practice does not appear to possess much utility. As Hoffmann says, it merely allows in hearsay and opinion evidence, thus giving rise to collateral issues concerning the reasons why the witness was previously disbelieved. Such disbelief may have been unjustified or explicable. Accordingly, it would seem that Hoffmann's doubts about the legality of the practice are well founded."

I also agree with the opinion of the learned Mr Justice HC Nicholas comment that:

"It is clear that ... faith in a witness's testimony can be partial or fractional; evidence may be good in parts."[6]

- [13] A party's falsehood on one aspect does not detract from his/her other evidence. Although a court may infer that a witness, caught out of lying on one aspect, has also testified falsely on other aspects, such falsehood does not normally detract from the other evidence. It is settled law that the maxims *semel mentitus semper mentitur* and *falsum in uno falsum in omnibus* are illogical and unreliable. There is no rule that a liar on a specific aspect should be held to be a liar in all other aspects.

In *R v Gumede*[7] the Appeal Court made this crystal clear in the following words:

“If a witness has “switched”, that fact must ordinarily reflect upon his credit. But, for the same reasons that a person convicted of perjury is no longer held to be inadmissible as a witness, there is no compulsion to reject the evidence of a witness who at different times has given conflicting narratives of the events in issue. There may be motives inducing a witness at one stage to tell falsehoods and subsequently to confess the truth, and it would be arbitrary rashness to hold that the later evidence must necessarily be rejected. In the present case the Court a quo carefully considered this factor as one detracting from the value of Jixani’s evidence, but nevertheless came to the conclusion that her evidence at the trial of applicant was substantially true. Such a conclusion is more satisfactory where it becomes apparent why at a former stage the witness was untruthful. ... Ultimately at her own trial, as well as at the trial of applicant, she came out with the story which the majority of the Judges a quo accepted as substantially true. Semel mentitus semper mentitur is as unreliable and illogical as the maxim falsum in uno falsum in omnibus.”

[14] I conclude by stating that, pertaining to the three alleged suretyship agreements, it is evident that five different people

signed as witnesses who may or may not give any significant testimony pertaining to the circumstances under which the documents were signed. It is apparent that Moselane does not contest his signature on the documents, but have raised several defences.

It is also apparent, and I do not have to come to any prima facie conclusion in this regard, that Moselane confirmed under his signature the contents of Voltex’s letters to the effect that

he and the Trust bound themselves as sureties for the debt of Ikageng.[8] The saying, caveat subscriptor will probably be relied upon by Voltex, i.e. Moselane, the person who signed the first two documents. In terms hereof the person signing the document signifies assent to the contents thereof and has to blame himself if this turns out unfavourably to him. However, Moselane’s defences will be duly considered by the court who will eventually adjudicate the matter. The dispute concerning the Trust is factual, but to a large extent of a legal nature and totally separate from the matter against Moselane personally. In my view and even if the Voltex appeal succeeds pertaining to the claim against the Trust, that action will in all probabilities be adjudicated, not so much on factual issues and/or the reliability and/or the credibility of witnesses, but more so in respect of a crisp legal issue. Generally speaking, trustees must act together according to the law and this is also apparent from the terms of the Deed of Trust, although clause 13 thereof provides for authorisation by the trustees to one or more of them in respect of certain transactions. It is anticipated that the witnesses to be called to testify will be different from those that will testify in the other matter. The two different factual scenarios are unrelated with reference to dates, circumstances, witnesses (although Moselane is the common denominator) and legal principles. Credibility in the one instance may be a subsidiary issue in the other case. The facts and circumstances relevant to the signing of the Deed of Suretyship on 26 January 2017 differ completely from the first two situations in 2014 and 2015.

VII

CONCLUSION

[15] Applicant has not convinced me that a stay of the proceedings should be ordered. There is no reason why a costs order should not be made in favour of the respondent. Both counsel were ad idem that costs should follow the result.

VIII THE ORDER

[16] Therefore the following order is issued:

1. The application is dismissed with costs.

J P DAFFUE J

On behalf of Applicant: Adv R van der Merwe

Instructed by: Blair Attorneys

BLOEMFONTEIN

On behalf of Respondent: Adv N Segal

Instructed by: Lovius Block

[1] Main application: Answering affidavit par 21.5 p 287

[2] Main application: Annexure “E” of the Founding Affidavit pp 52 – 55 as well as Annexure “F” to the Founding Affidavit, pp 56 - 64

[3] Main application: Annexure “P” pp 214 - 219

[4] Stellenbosch Farmers’ Winery Group Ltd and Another v Martell ET CIE and Others 2003 (1) SA 11 (SCA) par 5

[5] A St Q Skeen: “Is it permissible to ask a witness if he has been disbelieved in a previous case?”

(1984) 101 SA Law Journal 432 at 435

[6] Oliver Schreiner Memorial Lecture on 28th August 1984 published in (1985) 102 SA Law Journal 32 at 35 under the title “Credibility of Witnesses”

[7] 1949 (3) SA 749 (AD) at 755 & 756; see also S v Mokonto 1971 (2) SA 319 (AD) 323A & Carpede v Choene 1986 (3) SA 445 (O) 451

[8] See Annexures “X6”, “X9” & “X10” on pp 231, 328 & 240 of the main application

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/ZAFSHC/2020/194.html>

CASE PAGE <https://chat.esheria.ai/case-law/south-africa/moselane-v-voltex-unknown-topic-afshc-2020>

Prepared on 10 October 2026 · Esheria