

SOUTH AFRICA / JUDGMENT

Muller v Snyman (MCA 05/2023) [2024] ZALMPTHC 24 (15 March 2024)

[2024] ZALMPTHC 24

COURT

Limpopo High Court, Thohoyandou

BEFORE

FS Nemutandani, AML Phatudi

CASE / FILE NUMBER

MCA 05/2023

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

Source record

IN

THE HIGH COURT OF SOUTH AFRICA

LIMPOPO

LOCAL DIVISION, THOHOYANDOU

Case

no: MCA 05/2023

REPORTABLE:NO

OF

INTEREST TO OTHER JUDGES:NO

REVISED

DATE:15/03/2024

In

the matter between:

IZAK
STEPHANUS MULLER
APPELLANT
And
JOHANNES
WILLEM SNYMAN
RESPONDENT
In

re:

JOHANNES
WILLEM SNYMAN
PLAINTIFF
IZAK
STEPHANUS
MULLER
DEFENDANT

JUDGMENT

NEMUTANDANI AJ

Introduction

- [1] This is an appeal against the whole judgment and order handed down at Louis Trichardt Magistrates' court on the 31 May 2023. The magistrate granted absolution from the instance as prayed for by the plaintiff. He further granted judgment in favour of the Plaintiff in the main action, and, ordered the Defendant to pay costs of suite on party and party scale.

Background**facts****The agreement**

- [2] The parties entered into a written agreement on 26 January 2018 terms of which were:

2.1 the Appellant bought tomato crops planted by the Respondent on 3.4 hectares of land.

2.2 the purchase consideration for the tomato crops was a total amount of R 186 000.00

2.3 the debt due to Mooigrond Boerdery (Pty) Ltd by the Respondent in the amount of R 86 000.00 for monies lent and advanced would be subtracted from the purchase consideration.

2.4 the balance of R 100 000.00 would be paid by the Appellant after the tomatoes had been harvested.

The Pleadings

- [3] The Plaintiff issued summons and claimed an amount of R 100 000.00 alleging that he complied with the terms of the agreement by making the tomato crops available in terms of the contract. He further claimed an amount of R 30 773.00 (this being the balance of R 86 000.00) which is due to Mooigrond Boerdery by the Defendant for monies lent and advanced.
- [4] In his plea, the Defendant denied an obligation to pay the amount as claimed to the Plaintiff as the crop of tomatoes failed dismally with none or insignificantly little tomatoes that could be harvested. He pleaded that consequently there was no agreement between the parties. He also raised a counterclaim and claimed a repayment of an amount of R 86 000.00 for monies advanced by the Defendant to the Plaintiff.

[5] In his Replication, the Plaintiff pleaded that the agreement between the parties constituted the whole agreement and conformed to the intention of the parties. Any term, implied or tacit at variance thereto and not specifically reduced to writing, is of no force and effect as no consensus thereto existed between the parties at the time of concluding the agreement, or anytime thereafter.

5.1 The Plaintiff denied that the existence of the agreement was conditional upon any fulfilment of any conditions, obligations, warranties or any pre- requisites.

5.2 The Plaintiff also raised a special plea of non locus standi in judicio of the Defendant in light of the fact that Mooigrond Boerdery is a legal entity on it's own.

5.3 In his plea in reconvention, the Plaintiff denied that the Defendant is clothed with the necessary locus standi in judicio to pursue the current claim against the Plaintiff.

The Trial

[6] The parties held a pre-trial conference wherein it was agreed that the Defendant will begin. At the commencement of trial, the parties were not ad idem on who bears the duty to begin. The Defendant contended to begin in respect of the special plea only. Following the abandonment of the special plea, the defendant opined not to begin. The court a quo then ordered that the Defendant must begin, which he did.

[7] The Defendant testified together with his witness. At the close of the Defendant's case, the Plaintiff applied for absolution from the instance that was, granted. Immediately thereafter, the trial court handed down an order as prayed for in the main by the Plaintiff.

The evidence

[8] The crux of the Defendant's case and his witness, Mr Quinn, against the Plaintiff, is that the Plaintiff at the time of planting the crops, failed to apply proper and adequate measures to ensure successful crop harvest; failed to conduct proper soil preparation; failed to rid the 3.4 ha of weeds and administer proper and adequate weed control substances to stop, or, stunt the re-growth of weed; and finally, failed to supply sufficient irrigation to the crops. The evidence was further to the effect that the Plaintiff caused the neighbouring crops belonging to him to be infested and overrun by weeds and red spiders which were not controlled by the plaintiff that led to the said weed and spiders spilling over the said tomato crops. Owing to the above, the evidence was to the effect that the harvest was a failure.

Grounds of Appeal

[9] the Appellant contends that the magistrate erred in the following respects:

9.1 in finding that the Defendant had the onus (sic) to begin.

9.2 in finding that the Defendant had the onus to prove the allegations raised in his defence.

9.3 In finding that the Defendant failed to establish a prima facie case against the Plaintiff.

9.4 In granting absolution from the instance.

9.5 In finding that the agreement between the parties is still binding between the parties. The Appellant contends further that the Magistrate should have found that the agreement between the parties was subject to implied or tacit term that should the harvest not materialise, there is no agreement.

9.6 Lastly, that the magistrate erred in granting judgment and should have dismissed the claim against the Defendant

Issue

[10] The overall basis of this appeal lies on two things. Firstly, whether or not the Magistrate erred in granting absolution from the instance and, secondly, whether or not the Magistrate erred in granting judgment in favour of the Plaintiff without the Plaintiff leading any evidence.

The law

[11] Rule 29 (7) (a), (b), (8) and (9) of the magistrate's court Act provides:

“(7)

(a) If on the pleadings the burden of proof is on the plaintiff he shall first adduce his evidence.

(b) If absolution from the instance is not then decreed, the defendant shall then adduce his evidence.

(8) Where such burden of proof is on the defendant, the defendant shall first adduce his evidence, and if necessary, the plaintiff shall thereafter adduce his evidence.

(9)

(a) Where the burden of proving one or more of the issues is on the plaintiff and that of proving others is on the defendant, the plaintiff shall first call his evidence on any issues proof whereof is upon him, and may then close his case, and the defendant shall then call his evidence on all the issues.

(b) If the plaintiff has not called any evidence (other than that necessitated by his evidence on the issues proof whereof is on him) on any issues proof whereof is on the defendant, he shall have the right to do so after defendant has closed his case. If he has called any such evidence, he shall have no such right.”.

Evaluation

- [12] In order to put the facts into context, the following needs re-iteration. The Defendant was directed by the magistrate to begin. He indeed began and after his evidence, his witness, to wit, Mr Quin, took the stand after which the Defendant closed his case. Plaintiff successfully applied for absolution from the instance, which was granted followed by judgment in favour of the Plaintiff as claimed.
- [13] The court adopted the following approach with regard to onus[1] ,
- “ at the pre-trial conference, the Defendant chooses to take the onus to begin leading evidence. Which would in my understanding, put him on the spot to proof (sic), the counterclaim and tacit and/or implied terms as Plaintiff in reconvention”*
- [13] Harms, writing in “Civil Procedure in the Magistrates Court” at D48.9 sets it out succinctly that: “The incidence of the burden of proof is a matter of substantive law. It denotes the duty which is cast on a particular litigant of finally satisfying the court that he is entitled to succeed on his claim or defence, as the case may be. The burden of proof never shifts.”[2] This goes hand in hand with the old latin maxim: “actori incumbit probatio”. Plainly put, he who alleges must prove.
- [14] This matter raises the question: does the burden of proof shift. The Supreme Court of Appeal in *Goliath v Member of the Executive Council for Health, Eastern Cape* put paid to the notion that the burden of proof can shift. That Court per Ponnann JA, stated at: “[8] The general rule is that she who asserts must prove...” The Court went on further and stated: “it being trite that the onus resting upon a plaintiff never shifts (*Arthur v Bezuidenhout* and *Mieny* at 573C).
- [15] It has been held that to the extent that parties attempt to shift the burden by way of agreement, this is not binding.[3] To permit such a change, as stated in *Goliath* may pervert the natural scheme of causation where one that states a thing must establish it by way of adducing evidence not the party on the receiving end of the allegation. The latter may simply prove that his rebuttal is true.
- [16] This view was taken in *Neethling v The Weekly Mail and Others*[4] where it was equally stated that: “The broad position obtaining in the Civil law as to the incidence of the burden of proof was summarised thus by Kotzé JA in *Kunz v Swart and Others* 1924 AD 618 at 662-3: 'The rule of the Civil law was *actori incumbit suae intentionis probatio* , so that if the plaintiff failed to establish his claim the defendant was absolved. The defendant (*reus*), however, if he sets up an exception or defence, was, in respect of it, considered to be in the position of a plaintiff and had to prove his exception.”
- [16] In this case, the Defendant's onus of proof lied on his counterclaim against the Plaintiff and not in the Plaintiff's case against him. Logically, with the counterclaim dismissed, what was then left was the Plaintiff's claim against the Defendant.
- [17] In *Mobil Oil Southern Africa (PTY) Ltd V Mechin* [5], the following was held:

“...In the realm of a contract this means that a Plaintiff, relying on an agreement, bears the onus of alleging and establishing that it is binding and enforceable one and that what he claims is due..”

- [18] The fundamental question in the circumstances of this case, is whether the Plaintiff has discharged his onus. Even if the Defendant's evidence confirms the contract, the implied terms alleged by the Defendant needed to be rebutted by evidence so as to assess the Plaintiff's claim against the Defendant's contentions. The Plaintiff has not presented his case to justify the judgment granted.
- [19] Turning to the merits of the Defendant's counterclaim, It is common cause that the counterclaim is in respect of the R 86 000.00 owed by the Plaintiff to Mooigrond Boerdery (Pty) Ltd. The Defendant does not have the locus standi to institute or recover on behalf of a legal entity. Even if he can, in the absence of empowering authority, the Defendant cannot claim on behalf of the legal entity.
- [20] Appellant's reliance on Section 15 of Act 25 of 1965 is misplaced. The admission did not in any way relate to the Defendant but to a third persona. The special plea was thus correctly raised.
- [21] On the facts and evidence presented at the court a quo, I am not persuaded that the magistrate erred by granting absolution from the instance at close of Defendant's case. Conventionally, the absolution was on the Defendant's counterclaim.
- [22] The next aspect is on the common cause fact that the magistrate proceeded and granted judgment in favour of the Plaintiff as prayed for in the summons without the Plaintiff leading any evidence.
- [23] An examination into whether or not the magistrate erred in granting judgment in favour of the Plaintiff is thus peremptory. The Plaintiff bore the burden of proof in respect of his claim against the Defendant. On the other hand, the Defendant bore the burden of proof on his counterclaim.
- [23] The fact that the court a quo has determined that the Defendant must adduce evidence first, will not in itself alter the incidence of the burden of proof because it is determined by substantive law.
- [24] In reasoning that the Plaintiff is entitled to judgment, without leading evidence the magistrate at page ----- relied on *Motsei v Minister of Police* and in *re Phefadu v Minister of Police*[6], and referenced that Baqwa J at (7) stated as follows:
- “the test is similar where a Defendant upon whom the onus rests fails to lead such evidence in discharge of that onus with the result that a reasonable man could not come to the conclusion that it might be accepted, the court is entitled to give judgment for the Plaintiff”.*
- [25] In *Mhaga v Minister of Safety and Security*[7] the court held that the shifting of onus in unlawful arrest and detention is based on the fact that once arrest and detention are

admitted the onus of proving lawfulness of arrest rests with the state. This not being an onus proper but merely a burden of adducing

evidence to rebut a prima facie case.

[26] From the above, it is clear that the burden of proof rests on the one who attempts to make out a case for particular relief. To say it shifts depending on who and what is alleged is a misnomer. Each party must simply prove what they have alleged to one of two ends: i) proving their case or ii) rebutting a case against them.

[27] In the circumstances of this matter, there is no evidence by the Plaintiff in proving his case against the Defendant to justify an order in his favour. The Plaintiff ought to have taken a stand to prove his case against the Defendant. On this end, the Magistrate misdirected himself.

[28] At the Appeal hearing, Counsels were engaged on what should become of the matter if the appeal succeeds in whole or in part. It was submitted that the court should make an order it deems fit. Considering this court's finding that the absolution was correctly granted by the court a quo. In the absence of plaintiff's evidence, this court is precluded from making an order in favour of the Plaintiff.

Costs

[29] This result reflects success for both parties. An order that each party pays its own costs fits well in this matter.

Order

[30] I accordingly make the following order:

30.1 Appellant's appeal against the absolution from the instance order is dismissed;

30.2 Appellant's appeal against judgment in favour of the Plaintiff is upheld;

30.3 Each party is to pay its own costs.

FS NEMUTANDANI

ACTING JUDGE OF THE HIGH COURT

I concur and it is so ordered.

AML PHATUDI

JUDGE OF THE HIGH COURT

Appearances

1. For the Appellant : Adv SS Green

Instructed by " Charles Pieterse Attorneys

2. For the Respondent : Adv Schoeman

Instructed by : Strydom Bredenkamp Inc.

c/oVenter & Venter Inc.

3. Date of hearing

: 24 November 2023

4. Date of judgment

: 15 March 2024

[1] Page 7 of the judgement, P 310 of the record

[2] Cecilia Goliath v Member of the Executive Council for Health, Eastern Cape (085/2014) [2014] ZASCA 182 (25 November 2014).

[3] Aegis Insurance Co Ltd v Consani NO [1996] ZASCA 66; [1996] 3 All SA 547 (A), 1996 (4) SA 1 (A).

[4] Neethling v The Weekly Mail and Others 1994 (1) SA 708 (A)

[5] 1965 (2) SA 706 (A)

[6] 65356/2012, 65249/12 [2014] ZAGPCHC 567 (23 May 2014)

[7] 2001 (2) All SA 534 (Tk)

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/ZALMPHHC/2024/24.html>

CASE PAGE <https://chat.esheria.ai/case-law/south-africa/muller-v-snyman-unknown-topic-almphc-2024>

Prepared on 10 October 2026 · Esheria