

SOUTH AFRICA / JUDGMENT

Ndabeni and Others v Mokotedi and Others (Reasons) (5987/2024) [2024] ZANWHC 294 (4 December 2024) [2024] ZANWHC 294

COURT

North West High Court, Mafikeng

BEFORE

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CASE / FILE NUMBER

5987/2024

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IN

THE HIGH COURT OF SOUTH AFRICA

NORTH WEST

DIVISION, MAHIKENG

CASE

NO.: 5987/2024

In the matter between:

VUYISILE
CHARLES NDABENI
1st
APPLICANT
GLOBAL
TOURISM LEGACY NETWORKS (PTY) LTD
2nd
APPLICANT
LENGAU
AFRICA INVESTMENT (PTY) LTD
3rd
APPLICANT
MOTSWANA
RE NA LE RONA NPC
4th
APPLICANT
And
SOPHIE
MOKOTEDI
1st
RESPONDENT
PILANESBERG

GLOBAL RESORTS (PTY) LTD
2nd
RESPONDENT
PILANESBERG
INTERGRATED SAFARIS (PTY) LTD
3rd
RESPONDENT
NORTH
WEST PARKS AND TOURISM BOARD
4th
RESPONDENT
TOURVEST
(PTY) LTD
5th
RESPONDENT
MANKWE
GAME TRACKERS (PTY) LTD
6th
RESPONDENT
SUN
INTERNATIONAL OF SOUTH AFRICA
7th
RESPONDENT
REASONS
FOR ORDER DATED 28 NOVEMBER 2024

INTRODUCTION:

[1]
The applicants in this matter, Vuyisile Charles Ndabeni (the first applicant), Global
Tourism Legacy Networks (Pty) Ltd (the second applicant), Lengau Africa Investment (Pty) Ltd (the third applicant) and Motswana
Re Na Le Rona NPC (the fourth applicant) launched an urgent application which was heard on 22 November 2024.

[2]
At the hearing of the matter, the first applicant appeared in person. The first applicant,
(Mr. Ndabeni), informed the Court that he was appearing on behalf of the second, third and fourth applicants. There was no appearance
for the respondents. There was however a notice to oppose, a notice in terms of Rule 30(2)(b) and a notice in terms of Rule 30A
which were served on 21 November 2024 on the first applicant but the notice to oppose, notice in terms of Rule 30(2)(b) and Rule 30A were not filed.

[3]
After hearing arguments from Mr. Ndabeni, the Court reserved judgment and on 28 November
2024 handed down an order in the following terms:
(i)

The application is dismissed;

(ii)

No order as to costs.

[4]

What follows hereinunder are the reasons for the court order dated 28 November 2024.

THE LAW

[5]

Every application must be brought on notice of motion supported by an affidavit as

to the facts upon which the applicant relies for relief.

(See: Rule 6(1) of the Uniform Rules of the Court).

[6]

An affidavit is a statement in writing sworn to before someone who has authority to

administer an oath. It is a solemn assurance of fact

known to the person who states it, and sworn to as his statement

before some

person in authority such as a commissioner of oaths.

[7]

Regulation 4(1) of the Regulations Governing the Administration of an Oath or Affirmation

reads as follows: “Below the deponent’s

signature or mark the commissioner of oaths shall certify that the

deponent has acknowledged that he

knows and understands the contents

of the declaration and he shall state the manner, place and date of taking the declaration.”

[8]

Regulation 4(2) of the Regulations Governing the Administration of an Oath or Affirmation

reads as follows: “The commissioner of

oaths shall – (a) sign the declaration and print his full name

and business address below his signature;

and (b) state his

designation and the area for which he holds his appointment or office held by him if he holds his appointment

ex officio.”

[9]

In affidavits filed which are filed in support of the notice of motion. It is well

established that the applicant should make out his

or her case in the founding affidavit and certainly not belatedly in argument.

(See: My Vote Counts NPC v Speaker of the National Assembly 2016 (1) SA 132 (CC) at paragraph 177).

[10]

The founding affidavit must at the least contain the following:

- (a)
applicant's right to apply, that is the applicant's locus standi. Appropriate allegations to establish the locus standi of an applicant should be made in the founding affidavit. The applicant must satisfy the court that he or she has a direct interest in the relief sought, the interest must not be too remote, the interest must be actual, not abstract or academic and it must be current interest and not a hypothetical one. The duty to allege and prove locus standi rests on the party instituting the proceedings. (See: Four Wheel Drive CC v Leshni Rattan NO (1048/17) [2018ZASCA 124 (26 September 2018) at paragraph 7).
- (b)
In addition, the founding affidavit should contain facts indicating that the court has jurisdiction.
- (c)
The cause of action on which the applicant relies. (See: National Council of Societies for the Prevention of Cruelty to Animals v Openshaw [2008] ZASCA 78; 2008 (5) SA 339 (SCA) at 349A – B)
- (d)
The evidence in support of the application. In application proceedings, the affidavits take the place of not only the pleadings in an action, but also the essential evidence which is to be led at a trial. (See: National Credit Regulator v Lewis Stores (Pty) Ltd 2020 (2) SA 390 (SCA) at paragraph 29).
- [11]
A company cannot conduct a case in court except by the appearance of counsel acting on its behalf (See: Manong v Minister of Public Works (518/2008) [2009] ZASCA 110 (23 September 2009) at paragraph 4).
- [12]
In Ganes v Telecom Namibia Ltd 2004 (3) SA 615 (SCA) at 624G – H, the court held that a deponent to an affidavit need not be authorized to depose to the affidavit in support of the application. It is the institution of the proceedings and prosecution thereof that must be authorized.
- [13]
In proceedings, where the applicant is an artificial person, evidence is required that the applicant has duly resolved to institute the proceedings, and the proceedings are instituted at its instance. (See: Tattersall and Another v Nedcor Bank Ltd. (340/93)

[1995] ZASCA 30; 1995 (3) SA 222 (AD); [1995] 2 All SA 365 (A) (28 March 1995) at paragraph 10)
THE HEARING OF THE
MATTER

[14]

When this matter was heard, the Court indicated to Mr. Ndabeni, that there was a document filed which purports to be a resolution of Global Tourism Legacy Networks (Pty) Ltd, Lengau Africa Investment (Pty) Ltd and Motswana Re Na Le Rona NPC. The Court pointed out that the resolution was only signed by Mr. Ndabeni and not by the other representatives of the second, third and fourth applicants.

[15]

Mr. Ndabeni in response informed the Court that the second, third and fourth applicants work together and that is why he was the only person who signed the resolution on behalf of the second and third applicants.

[16]

The Court then asked Mr. Ndabeni if he was an attorney or an advocate. Mr. Ndabeni informed the Court that he was neither an attorney nor an advocate.

[17]

Mr. Ndabeni was then referred to the document written “FOUNDING AFFIDAVIT”. The Court referred Mr. Ndabeni to the second page of the document. The Court pointed out to Mr. Ndabeni that although the police official whose names and rank are not reflected in the document but he or she is identified as a commissioner of oaths signed the document under the signature of Mr. Ndabeni. The police official failed to attach a certificate below Mr. Ndabeni’s signature certifying that Mr. Ndabeni had acknowledged that he knows and understands the contents of the declaration and he further failed to state the manner, place and date of taking the declaration. Mr. Ndabeni informed the Court that he did not know that was a requirement and had no comment.

[18]

Mr. Ndabeni was informed by the Court that the Court had read the document marked “FOUNDING AFFIDAVIT” and Mr. Ndabeni was asked if he wished to make any further submissions or if he stood by what is contained in the document marked “FOUNDING AFFIDAVIT”.

Mr. Ndabeni informed the Court that he stood by what was contained in the document marked “FOUNDING AFFIDAVIT”.

[19]

The Court considered the contents of the document marked “FOUNDING AFFIDAVIT”. The Court noted that Mr. Ndabeni made an allegation that he was duly authorized to bring the application on behalf of the second and third applicants.

[20]

Mr. Ndabeni averred that on 26 February 2024, he had sent a letter of demand on behalf of the second and third applicants to the first respondent, Sophie Mokotedi. The letter requested specific information to confirm the unlawful and illegal operationalization of the Sun City / Pilanesberg Game Reserve Traversing Route by the Third, Sixth and Seventh Respondent.

[21]

The Court noted that Mr. Ndabeni averred that the response of the first respondent was dismissive and disrespectful, demonstrating a contemptuous attitude.

[22]

The Court noted from the reading of the document marked “FOUNDING AFFIDAVIT” that the applicants sought the requested information to ascertain the legal status of the Sun City / Pilanesberg Game Reserve Traversing Route and undermines their right to transparency, performance and dealings.

[23]

The Court when examining the notice of motion noted the notice of motion sought relief in the following terms, “AN INTERDICT RESTRAINING THE THIRD AND SIXTH RESPONDENT FROM OPERATIONALIZING THE SUN CITY / PILANESBERG GAME RESERVE TRAVERSING ROUTE WITH IMMEDIATE EFFECT. ANYLYSIS

[24]

Although Mr. Ndabeni informed the Court that he is representing the second, third and fourth applicants and, in the document, marked “FOUNDING AFFIDAVIT” at paragraph 1, an averment is made that Mr. Ndabeni is duly authorized to bring the application on behalf of the second and third applicants. There is nothing said

about the Lengau Africa
Investment (Pty) Ltd.

[25]

The purported resolution filed in the court file refers to three
persons. Mr. Ndabeni, Mr. Mokete
Mochine a director of Global Tourism
Legacy Network (Pty) Ltd and Kamau Dibakwane a representative of
Motswana Re Na Le Rona NPC.
As I have indicated above, the resolution
was only signed by Mr. Ndabeni. No reference is made to the director
of the Lengau Africa
Investment (Pty) Ltd (the third applicant).

[26]

I am not satisfied that the second, third and fourth applicants
authorized Mr. Ndabeni to bring
the application on their behalf. Even
if I am wrong, Mr. Ndabeni had indicated to the Court that he is not
an attorney or an advocate.
The authorities are clear on this issue,
an artificial person cannot be represented in court proceedings by a
person who is not
an attorney or an advocate. I am consequently not
satisfied that the second, third and fourth applicants were before
the court
on 22 November 2024 when this matter was heard.

[27]

The documents marked "FOUNDING AFFIDAVIT" was not
properly commissioned. Mr. Ndabeni
did not move an application for
condonation of the noncompliance with Regulation 4(1) of the
regulations governing the administration
of an oath or affirmation.
Accordingly, the application of the first applicant was not
accompanied by an affidavit.

[28]

When the matter was heard, the Court viewed the papers of Mr. Ndabeni
benevolently because Mr.
Ndabeni is not a legal practitioner. There
is however a limit within which the Court could look benevolently on
the papers. The
document marked "FOUNDING AFFIDAVIT" in
addition to not being an affidavit, does not speak to the relief that
is sought
in the notice of motion. Mr. Ndabeni failed to make out a
cause of action which the applicants rely for an order interdicting
restraining
the third and sixth respondent from operationalizing the
Sun City / Pilanesberg Game Reserve Traversing Route with immediate
effect.
There is no legal connection between the documents sought by
the applicants and the interdict that is sought.

[29]

Mr. Ndabeni failed to make appropriate allegations to establish the locus standi of the applicants for the relief that they seek.

The applicant must satisfy the court that he or she has a direct interest in the

relief sought, the interest must not be too remote,

the interest must be actual, not abstract or academic and it must be current

interest and not a hypothetical one. Mr. Ndabeni failed in this regard.

COSTS

[30]

The general rule is costs follow the cause. The respondents served a notice to oppose on Mr.

Ndabeni and further served a notice in terms

of Rule 30(2)(b) and a notice in terms of Rule 30A but did not take part in the proceedings

of 22 November 2024.

[31]

In exercising my discretion, I found it would be fair on both sides if no order is made as it

relates to costs. This is because the

respondents did not take part in the proceedings of 22 November 2024.

ORDER:

[32]

Resultantly, the following order was made: -

T MASIKE

ACTING JUDGE OF THE

HIGH COURT

NORTH

WEST DIVISION, MAHIKENG

APPEARANCES

DATE FOR

HEARING

: 22

NOVEMBER 2024,

DATE OF

JUDGMENT

: 28 NOVEMBER 2024

DATE OF

REASONS

: 4 DECEMBER 2024

FOR 1st APPLICANT

: IN PERSON

INSTRUCTED BY

: IN PERSON

Email Address

: ndabenic@gmail.com

FOR THE RESPONDENTS

: NO APPEARANCE

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Prepared on 12 October 2026 · Esheria