

SOUTH AFRICA / JUDGMENT

**Nedbank Limited v Luvhomba Communications
& Information Technology CC and Others;
Nedbank Limited v Mzantsi Restaurants CC and
Others; Nedbank Limited v Luvhomba Legal
Edge CC and Others (48411/2013, 48412/2013,
48413/2013) [2018] ZAGPPHC 701 (5 March 2018)
[2018] ZAGPPHC 701**

COURT

North Gauteng High Court, Pretoria

BEFORE

Millar

CASE / FILE NUMBER

48411/2013, 48412/2013, 48413/2013

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IN THE HIGH COURT OF SOUTH
AFRICA

(GAUTENG DIVISION, PRETORIA)

(1) NOT

REPORTABLE

(2)

NOT OF INTEREST TO

OTHER JUDGES

(3)

REVISED

Case No. 48411/2013

5/3/2018

In

the matter between:

NEDBANK
LIMITED
PLAINTIFF
And
LUVHOMBA COMMUNICATIONS &
INFORMATION
FIRST DEFENDANT
TECHNOLOGY
CC
LUVHOMBA LEGAL EDGE
CC
SECOND DEFENDANT
MULAUDZI & ASSOCIATES
CC
THIRD DEFENDANT
GERENDRACC
FOURTH DEFENDANT
LUVHOMBA
LEGAL CARE CC
FIFTH DEFENDANT
MZANTSI
RESTAURANTS
CC
SIXTH DEFENDANT
LEGAE
LE MONATE RESTAURANT CC
SEVENTH DEFENDANT
LUVHOMBA
PROJECTS & CONSTRUCTION CC
EIGHTH DEFENDANT
LUVHOMBA
SECURITY SERVICES & PATROL CC
NINETH DEFENDANT
LUVHOMBA
LEGAL AXE
CC
TENTH DEFENDANT
LUVHOMBA
FINANCIAL SERVICES CC
ELEVENTH DEFENDANT
MATTHEWS
TUWANI MULAUDZI
TWELTH DEFENDANT
Case No. 48412/2013
NEDBANK
LIMITED
PLAINTIFF
MZANTSI
RESTAURANTS CC
FIRST DEFENDANT
MATTHEWS

TUWANI MULAUDZI
SECOND DEFENDANT
LUVHOMBA
LEGAL EDGE CC
THIRD DEFENDANT
MULAUDZI
& ASSOCIATES
CC
FOURTH DEFENDANT
GERENDRA
CC
FIFTH DEFENDANT
LUVHOMBA
LEGAL CARE CC
SIXTH DEFENDANT
LUVHOMBA
COMMUNICATIONS & INFORMATION
TECHNOLOGY
CC
SEVENTH DEFENDANT
LEGAE
LE MONATE RESTAURANT CC
EIGHTH DEFENDANT
LUVHOMBA
PROJECTS & CONSTRUCTION CC
NINETH DEFENDANT
LUVHOMBA
SECURITY SERVICES & PATROL CC
TENTH DEFENDANT
LUVHOMBA
LEGAL AXE CC
ELEVENTH DEFENDANT
LUVHOMBA
FINANCIAL SERVICES CC
TWELTH DEFENDANT
Case No. 48413/2013
NEDBANK LIMITED PLAINTIFF
LUVHOMBA
LEGAL EDGE CC
FIRST DEFENDANT
MATTHEWS
TUWANI MULAUDZI
SECOND DEFENDANT
MULAUDZI
& ASSOCIATES
CC
THIRD DEFENDANT
GERENDRA
CC
FOURTH DEFENDANT
LUVHOMBA LEGAL CARE

CC
FIFTH DEFENDANT
LUVHOMBA COMMUNICATIONS &
INFORMATION
SIXTH
DEFENDANT
TECHNOLOGY CC
MZANTSI RESTAURANTS
CC
SEVENTH DEFENDANT
LEGAE
LE MONATE RESTAURANT CC
EIGHTH DEFENDANT
LUVHOMBA
PROJECTS & CONSTRUCTION CC
NINTH DEFENDANT
LUVHOMBA
SECURITY SERVICES & PATROL CC
TENTH DEFENDANT

JUDGMENT

MILLAR, AJ

1. The plaintiff instituted actions against Mr. Mathews Tuwani Mulaudzi ("Mulaudzj») and various close corporations of which he was the sole member. There are over the three separate cases which were allocated for hearing before me, eleven different entities excluding Mulaudzi in his personal capacity.
2. The first case with case number 48411/2013 was for monies owed to the plaintiff in respect of overdraft facilities that had been granted to it. All the other defendants in that case had executed deeds of suretyship in favour of the plaintiff for the debts of the first defendant and were sued in that capacity. The cause of action in the action with case number 484212/2013 was similarly for monies owed in respect overdraft facilities granted to the first defendant in that action and the remaining defendants were also sued as sureties. In the third case under case number 484213/2013, the plaintiffs cause of action was in respect of installment sales agreements relating to the purchase of 4 motor vehicles entered into between the plaintiff and the first defendant in that action and there too all the other defendants were sued in their capacity as sureties. The claims are all based on written agreements which were attached to the pleadings. In addition, various of the defendants, all close corporations, had passed mortgage bonds over immovable property registered in the name of that defendant as security for the obligations of the particular defendant. The plaintiff is the mortgagee in each instance.

3. All three actions were defended on behalf of all the defendants and pleas filed. The pleadings closed in all three matters and pretrial

conferences were held on 17 June 2015. There is a notice of withdrawal as attorneys of record in the court file for case number

48413/2013 but no such notices in the court files for cases 484211/2013 and 484212/2013 respectively.

4. When the matters were called, Adv. Kilian for the plaintiff informed me that pursuant to an agreement with the trustee of Mulaudzi whose estate has been finally sequestrated, no order would be sought against him or his estate. Mulaudzi appeared personally and confirmed that he had indeed been finally sequestrated but that he had various disputes with his trustee. He also indicated that he wished, in his personal capacity to represent the eleven entities, of which he had been the sole member, in the present litigation. There was no explanation as to why neither counsel nor an attorney appeared in cases 484211/2013 or case 484212/2013.
5. Counsel for the plaintiff raised an objection to the appearance of Mulaudzi in this capacity and referred me to the judgment of the Supreme Court of Appeal in *Manong & Associates (Pty) Ltd v Minister of Public Works and Another*[1] in which it was held that in regard to an appearance by a private person:

"in each instance leave had to be sought by way of a properly motivated, timeously lodged formal application showing good cause why, in the particular case, the rule prohibiting non-professional representation should be relaxed. Individual cases could thus be met by the exercise of the discretion in the circumstances in that case. It would thus be impermissible for a non-professional to take any step in the proceedings, including the signing of pleadings, notices or heads of argument, without the requisite leave of the court concerned first having been sought and obtained."

6. No such application was brought beforehand with Mulaudzi simply appearing on the day in person and asserting his right to appear for the various entities. I was nevertheless prepared to hear Mulaudzi and invited him to lay a basis for his right to appear. Aside the dispute with his trustee, I was informed by Mulaudzi that the Supreme Court of Appeal had previously granted him the right to appear on behalf of the various entities, notwithstanding that his estate had been finally sequestrated.
7. He referred me to the judgment of that court in *Mulaudzi v Old Mutual Life Insurance Company (South Africa) Limited and Others, National Director of Public Prosecutions and Another v Mulaudzi*[2] and assured me that this had established his right. I adjourned the court to afford me an opportunity to consider the particular judgment. Mulaudzi had appeared in court without any documentation and had simply made submissions from the bar. The passage in the judgement upon which it seems to me that he sought to rely was the following:

"[20] Save for a narrow point (to which I shall latterly turn) sought to be advanced in the second appeal, the trustees formally stated that they would abide the decision of this court in both matters. In the result, the Mulaudzis were entitled to take steps which, if successful, would enhance the value of the estate, whether by increasing the assets in the estate in the second appeal or reducing the liabilities in the estate in the first appeal. The Mulaudzis were thus entitled to intervene in both matters"

8. I do not agree that the passage I was referred to confers upon Mulaudzi a right to appear for the eleven entities. The case referred to concerned Mulaudzi in his personal capacity and viz a viz his trustee, a situation entirely distinguishable from the present.
9. Although Mulaudzi was the sole member in control of the entities before the granting of the sequestration order, it is trite that the granting of that order caused the members interest in the various entities to vest in the trustee. The members interest accordingly vests in the trustee and Mulaudzi, personally, has neither a right nor an interest in the proceedings against the eleven entities. The present matter is further distinguishable from those cases where permission was granted for a non-professional person to appear on behalf of an entity where the person and the entity were for all intents and purposes one[3]
 - The number of entities, eleven, militates against a finding in this regard[4].
10. Having heard Mulaudzi and having considered the matter I refused his request to appear on behalf of the entities. I indicated that I would proceed to hear the plaintiff and would give judgment and my reasons for refusing his request on 5 March 2018. Mulaudzi excused himself and left the court.
11. I am satisfied, having been addressed by counsel that cases have been made out for judgment by default in all three matters and in the circumstances make the following orders:
12. AD CASE NUMBER 48411/2013
 - 12.1 The first to eleventh defendants inclusive are ordered, jointly and severally, the one paying the others to be absolved, to:
 - 12.1.1 Make payment to the plaintiff of the sum of R2 940 008.59;
 - 12.1.2 Pay interest on the aforesaid amount at the plaintiff's prime interest rate from time to time, plus 11.5% per annum, calculated daily on the outstanding balance and compounded monthly from 11 July 2013, to date of final payment, both days inclusive;
 - 12.1.3 Costs of suit on the scale as between attorney and client.
 - 12.2 As against the second defendant only:
 - 12.2.1 The following immovable property is declared to be specially executable:

12.2.1.1.1 Remaining extent of erf 323 Sunnyside (Pretoria) Township, Registration Division J.R, the Province of Gauteng, measuring 388 square metres, held under deed of Transfer No. T082134/2008.

12.2.1.1.2 Remaining extent of erf 6 Hatfield Township, Registration Division J.R, the Province of Gauteng, measuring 1275 square metres, held under deed of Transfer No. T006312/2010.

12.3 As against the third defendant only:

12.3.1 The following immovable property is declared to be specially executable"

12.3.1.1.1 Portion 132 (a portion of portion 6) of erf 1856 Waterkloof Ridge Township, Registration Division J.R, the Province of Gauteng, measuring 1225 square metres, held under deed of Transfer No. T 084283/2006

13. AD CASE NUMBER 48412/2013

13.1 The first and third to twelfth defendants inclusive are ordered, jointly and severally, the one paying the others to be absolved, to:

13.1.1 Make payment to the plaintiff of the sum of RS 632 633.53;

13.1.2 Pay interest on the aforesaid amount at the plaintiffs prime interest rate from time to time, plus 11.5% per annum, calculated daily on the outstanding balance and compounded monthly from 11 July 2013, to date of final payment, both days inclusive;

13.1.3 Costs of suit on the scale as between attorney and client.

13.2 As against the third defendant only:

13.2.1 The following immovable property is declared to be specially executable:

13.2.1.1.1 Remaining extent of erf 323 Sunnyside (Pretoria) Township, Registration Division J.R, the Province of Gauteng, measuring 388 square metres, held under deed of Transfer No. T082134/2008.

13.2.1.1.2 Remaining extent of erf 6 Hatfield Township, Registration Division J.R, the Province of Gauteng, measuring 1275 square metres, held under deed of Transfer No. T006312/2010.

13.3 As against the fourth defendant only:

13.3.1 The following immovable property is declared to be specially executable"

13.3.1.1.1 Portion 132 (a portion of portion 6) of erf 1856 Waterkloof Ridge Township, Registration Division J.R, the Province of Gauteng, measuring 1225 square metres, held under deed of Transfer No. T 084283/2006

14. AD CASE NUMBER 48413/2013

14.1 The first and the third to twelfth defendants inclusive are ordered, jointly and severally, the one paying the others to be absolved, to pay the costs of this action on the scale as between attorney and client.

14.1.1 The plaintiff is entitled to take repossession from the first defendant or any other person who may be in possession thereof through the first defendant, of the following motor vehicles:

14.1.1.1 a Fiat Strada 1.4 with Eng/Semo 178F50388981080 and Vin No: 9BD27835K07179056.

14.1.1.2 a Fiat Strada 1.4 with Eng/Semo 178F50389150943 and Vin No: 9BD27835K07201758

14.1.1.3 a Fiat Palio Active with Eng/Semo.: 178870453844968 and Vin No: MCA17852808073100

14.1.1.4 a Land Rover Range Rover 5.0 V8 S/C with Eng/Semo: 10051705130508PS and Vin No: SALLMANE3AA327808

14.1.2 the relief sought in prayers 1 and 2 in respect of claims A, B, C and D are postponed sine die pending the determination of the market value of the motor vehicles referred to in paragraphs 14.1.1 to 14.1.1.4 of this Order.

14.1.3 The plaintiff is granted leave to approach this Court on the same papers (duly supplemented) and subject to paragraph 14.1.2 of this Order for the relief sought in prayers 1 and 2 of claims A, B, C and D.

14.1.4 The relief claimed as against the first defendant to declare the immovable property, the Remaining extent of erf 323 Sunnyside

(Pretoria) Township, Registration Division J.R, the Province of Gauteng, measuring 388 square metres, held under deed of Transfer No. T082134/2008 and Remaining extent of erf 6 Hatfield Township, Registration Division J.R, the Province of Gauteng, measuring 1275 square metres, held under deed of Transfer No. T006312/2010, specially executable, is postponed sine die.

14.1.5 The relief claimed as against the third defendant to declare the immovable property, the Portion 132 (a portion of portion 6) of erf 1856 Waterkloof Ridge Township, Registration Division J.R. the Province of Gauteng, measuring 1225 square metres, held under deed of Transfer No. T 084283/2006, specially executable, is postponed sine die.

A MILLAR

ACTING JUDGE OF THE HIGH COURT

GAUTENG DIVISION, PRETORIA

HEARD ON:

16 FEBRUARY 2018

JUDGMENT

DELIVERED ON:

5 MARCH 2018

COUNSEL FOR THE PLAINTIFF:

ADV J KILIAN

INSTRUCTED BY:

BALOYI SWART & ASSOCIATES INC

REFERENCE:

MR SWART

APPEARANCE FOR THE DEFENDANTS: NONE

[1] 2010 (2) SA 167 (SCA) at 174 C-E-in

[2] 2017 (6) SA 90 (SCA)

[3] See in this regard Manong supra at page 172 paragraph 9

[4] The Supreme Court of Appeal stated in Manong supra at paragraph 5 on page 171 that "There is nothing to suggest that Mr. Manong's decision to secure the benefits of incorporation was not a genuine one. He did after all have the option of establishing and conducting business as an unincorporated sole proprietorship . There is thus a persuasive argument that having chosen the benefits of incorporation, he must bear the corresponding burdens and not be allowed to escape them lightly." This seems to me to be particularly apposite in the present case.

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Prepared on 10 October 2026 · Esheria