

SOUTH AFRICA / JUDGMENT

Nelson Mandela Bay Municipality v Gcora (508/2018) [2018] ZAECPEHC 47 (21 August 2018) [2018] ZAECPEHC 47

COURT

Eastern Cape High Court, Port Elizabeth

BEFORE

S M Mbenenge, M Makaula, N L Ntsepe

CASE / FILE NUMBER

508/2018

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IN THE HIGH COURT OF SOUTH AFRICA

(EASTERN CAPE LOCAL DIVISION, PORT ELIZABETH)

CASE NO. 508/2018

In the matter between:

NELSON MANDELA MAY MUNICIPALITY Applicant

and

SIPHO GCORA Respondent

REASONS

FOR RULE 42 ORDER

MBENENGE JP:

- [1] On 10 July 2018 this court delivered judgment involving an application brought by the applicant for the grant of certain declaratory relief, as also an interdict restraining the respondent from defaming the applicant, the applicant's executive officials, the applicant's employees and legal representatives (the main application). The matter also involved an application brought by the respondent against the applicant for an order declaring that the applicant had either breached or not fulfilled certain of its constitutional or statutory obligations (the counter-application). There were other applications either pending or disposed of involving the applicant and the respondent brought under different case numbers, for instance case number 992/2016 heard on 14

September 2017 and whose judgment was delivered on 20 September 2017.

- [2] The relevant prayer in the applicant's notice of motion in the main application had been couched as follows:

"3. That the respondent be interdicted and restrained from publishing in any form or manner material of any kind which is defamatory of:

3.1 the applicant;

3.2 the applicant's executive officials and its employees; and

3.3 the applicant's legal representatives..." (the emphasis is mine).

- [3] Both the main and counter applications were heard to a finish on 07 June 2018, culminating in an order being granted, inter alia, worded:

"(b) The respondent is restrained and interdicted from, in any manner whatsoever, defaming or making derogatory remarks of and concerning the applicant, its official (sic) and legal representatives."

- [4] Even though the main and counter applications had been brought and heard under case number 508/2018, the judgment therein was delivered under case number "992/2016". From a scrutiny of the order referred to in paragraph 3 above it will be observed that no reference is made to "executive" and to "employees". Furthermore, it referred to "official", and not to "officials".

- [5] Shortly after the launch of an application for leave to appeal by the respondent against the part of the order dismissing the

counter-application with costs, the applicant brought an application in terms of rule 42(1) (b) of the Uniform Rules of Court pointing to certain omissions in the order and contending that the omissions had resulted from a clerical and/or patent error (the variation application).

- [6] At the hearing of the application for leave to appeal the variation application was dealt with first. The respondent, who seemed to have initially been bent on opposing the application, went on record as no longer opposing the same.

- [7] The order sought in the variation application was granted in the terms sought and resulted in an order (without reasons) being granted effectively varying the case number and paragraph [53] (b) of this court's order embodied in the judgment delivered on 10 July 2018, to read as follows:

"(b) The respondent is restrained and interdicted from, in any manner whatsoever, defaming or making derogatory remarks of and concerning

the applicant, its executive officials, employees and legal representatives."

[8] Rule 42 is specifically meant to cater for omissions such as those that form the subject hereof. The court was of the view that the application passed muster, hence it granted the order it did. The applicant was successful in the main application; the order ought to have been granted in the terms sought in the notice of motion. There is no reason why the respondent should not be interdicted from defaming or making derogatory remarks of and concerning the applicant's executive officials and employees as well. The

intention had always been to refer to these functionaries, and the omission was a patent error. It is trite law that a judgment or order obtained in those circumstance is liable to be varied so as to reflect the intention of the court.[1]

[9] In the Thompson matter[2] it was held:

"In this regard there appears to be a misunderstanding about the power of a Court to amend or supplement its findings in contradistinction to its orders. The correct position was spelt out in Firestone South Africa (Pty) Ltd v Gentiruco AG 1977

(4) SA 298 (A) at 307C-G:

"The Court may correct a clerical, arithmetical or other error in its judgment or order so as to give effect to its true intention.... This exception is confined to the mere correction of an error in expressing the judgment or order; it does not extend to altering its intended sense or substance. Kotze JA made this distinction manifestly clear in [West Rand Estates Ltd v New Zealand Insurance Co Ltd 1926 AD 173 at 186-7], when, with reference to the old authorities, he said:

"The Court can, however, declare and interpret its own order or sentence, and likewise correct the wording of it, by substituting more accurate or intelligent language so long as the sense and substance of the sentence are in no way affected by such correction; for to interpret or correct is held not to be equivalent to altering or amending a definitive sentence once pronounced..."

[10] For the sake of completeness and caution it has become necessary, even absent a request therefor, to furnish reasons for the order made on 13 August 2018, as we hereby do.

S M MBENENGE

JUDGE PRESIDENT OF THE HIGH COURT

I agree

M MAKAULA

JUDGE OF THE HIGH COURT

N L NTSEPE

ACTING JUDGE OF THE HIGH COURT

Counsel for the applicant: S C Rorke SC (with him A Rawjee)

Instructed by: Gray Moodliar Inc. Attorneys

Port Elizabeth

The respondent: In person

Date heard: 13 August 2018

Date order delivered: 13 August 2018

Date reasons furnished: 21 August 2018

[1] Thompson v South African Broadcasting Corporation 2001 (3) SA 746 (SCA)

[2] Supra

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