

SOUTH AFRICA / JUDGMENT

Ngonyama and Another v Bosasa Youth Development Centres (Pty) Ltd and Others (42437/2021) [2023] ZAGPJHC 545 (22 May 2023) [2023] ZAGPJHC 545

COURT

South Gauteng High Court, Johannesburg

BEFORE

S Yacoob

CASE / FILE NUMBER

42437/2021

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IN THE HIGH COURT OF
SOUTH AFRICA
GAUTENG LOCAL
DIVISION, JOHANNESBURG
CASE NO: 42437/2021
REPORTABLE
OF INTEREST TO OTHER
JUDGES
REVISED

In the matter between:

LULAMA
SMUTS NGONYAMA
First
Plaintiff
THUNDERCATS
INVESTMENT 92 (PTY) LTD
Second
Plaintiff
And
BOSASA
YOUTH DEVELOPMENT CENTRES (PTY) LTD
First
Defendant
RALPH
FARRELL LUTCHMAN N.O.
Second
Defendant
CLOETE
MURRAY N.O.

Third
Defendant
OFENTSE
ANDREW NONG N.O.
Fourth
Defendant
TSHEPO
HARRY NONYANE N.O.
Fifth
Defendant
JARED
MICHAEL WATSON N.O.
Sixth
Defendant
NTSIMBINTLE
HOLDINGS (PTY) LTD
Seventh
Defendant
Neutral
Citation: Lulama Smuts
Ngonyama & Another v Bosasa
Youth Development Centres (Pty) Ltd and six Others (Case
No. 42437/2021) [2023] ZAGPJHC 545 (22 May 2023)

JUDGMENT

YACOOB J:

1. The sixth defendant, Mr Jared Michael Watson, is the excipient before this court. He is cited in the main action in his capacity as the executor of the estate of the late Gavin Watson, and contends that there is no case made out in the main action against him for the relief sought. He asks that the relief sought against him be dismissed with costs.
2. The plaintiffs have instituted action proceedings against the first to sixth defendants for a declaratory order that 184 shares in the seventh defendant which are registered as those of the first defendant do not fall within the first defendant's liquidated estate; an order that the first to sixth defendants take necessary steps to transfer to the plaintiff those 184 shares in the seventh defendant, which they contend were donated to the seventh defendant as a result of fraud, and the payment of a sum of money they contend was received by the first defendant as dividends resulting from its fraudulent ownership of the shares.
3. The second to fifth defendants are the liquidators of the first defendant.

4. The plaintiffs brought motion proceedings against the predecessor of the sixth defendant (that is, Mr Gavin Watson, who was then still alive) for the share transfer relief, which was granted by this court.[1] The sixth defendant's appeal to the Supreme Court of Appeal was successful,[2] and the plaintiffs unsuccessfully sought leave to appeal to the Constitutional Court.
5. The reasons for the decision of the SCA include:
 - 5.1. that the relief sought affected Bosasa Youth Development Centres (Pty) Ltd and its liquidators (the first to fifth defendants in this matter) and ought not to have been granted in their absence, even though the application against the first defendant had been withdrawn;
 - 5.2. that the question whether the donation of shares to the first defendant had been the result of a fraudulent misrepresentation by Mr Gavin Watson could not be properly decided in motion proceedings;
 - 5.3. that it was likely that the sixth defendant, who was the appellant in the SCA, could do more in furtherance of transfer of shares than make a request to the liquidators, which they were not bound to comply with;
 - 5.4. that the seventh defendant was not joined in that application.
6. The plaintiffs acknowledge in their particulars of claim that they have brought the action as a result of the judgment of the SCA and in the event that any appeal to the Constitutional Court is not successful. However, it appears that they omitted to take note of one issue in the reasoning of the SCA – that is, the question of whether the executor of Mr Gavin Watson's estate had the power to cause the transfer to occur.
7. That is, in fact, the primary basis of the exception brought by the sixth defendant. The plaintiffs do not plead that the sixth defendant has any authority or ability to do or cause to be done anything to do with transfer of shares from the first defendant, or payment of dividends from the first defendant. In fact, even if the first defendant had not been in liquidation, there is no allegation that or from which it can be inferred that the sixth defendant has any authority in the first defendant at all.
8. The plaintiffs' heads of argument make much of the alleged fraud which is the basis of the action, and that the executors simply seek to protect a fraudster's estate by means of whatever ploys are available to them. However, this does not take away from the fact that the particulars of claim are defective in that they do not make a link between the claim and the sixth defendant. The link cannot be assumed without even being pleaded.

9. In argument it was suggested that the exception should be dismissed, or at least costs granted against the sixth defendant because the exception sought the dismissal of the claim as against him. I do not think this is appropriate, because the failure of the plaintiffs to amend their claim should properly result in the dismissal of the claim as against the sixth defendant.
10. There is no reason to not award costs against the plaintiffs, even if I grant leave to amend the particulars of claim, because they could have simply amended the particulars and avoided the costs of the hearing.
11. For these reasons I make the following order:
 - (a) The exception is upheld with costs to be paid by the plaintiffs, jointly and severally.
 - (b) The plaintiffs are granted leave to amend their particulars of claim, within 20 days of the date of this

judgment.

S. YACOOB

JUDGE OF THE HIGH COURT

Appearances

Counsel for the Plaintiff: LJ Morison SC & T Scott Instructed by: Knowles Husain Lindsay Counsel
for the Sixth Defendant: JH Loots SC & PS Bothma Instructed by: Van Wyk & Associates

Date of hearing: 08 November 2022

Date of judgment: 22 May 2023

- [1] Relief had initially also been sought in those proceedings against the first respondent, but the application against the first respondent was withdrawn.
- [2] Jared Michael Watson NO v Lulama Smuts Ngonyama and Thundercats Incestments 92 (Pty) Ltd 2021
- (5) SA 559 (SCA)

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Prepared on 13 October 2026 · Esheria