

SOUTH AFRICA / JUDGMENT

Omar v Sakoor (18659/12) [2013]

ZAGPJHC 78 (9 April 2013)

[2013] ZAGPJHC 78

COURT

South Gauteng High Court, Johannesburg

BEFORE

Van Oosten

CASE / FILE NUMBER

18659/12

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IN THE HIGH COURT OF SOUTH AFRICA

(SOUTH GAUTENG HIGH COURT, JOHANNESBURG)

CASE NO: 18659/12

DATE: 2012-08-30

In the matter between

ZEHIR OMAR Applicant and ERICA MIRIAM SAKOOR Respondent

Security for costs - application for in terms of Rule of Court 47 –respondent an incola of this court and cannot be compelled to furnish security - respondent in addition impecunious - order sought if granted would deprive the respondent of her constitutional right of access to the courts enshrined in s 34 of the Constitution - application dismissed.

J U D G M E N T

VAN OOSTEN J: This is an application for the furnishing of security for costs in terms of the provisions of Rule of Court 47(1). The amount of the security sought is R300 000-00 to be paid within 30 days of the order. The respondent in this application is the plaintiff and the applicant, a firm of attorneys, the defendant in a pending action between the parties. I will retain the nomenclature of the parties as in the action.

The plaintiff instituted action against the defendant based on what appears from inelegantly framed particulars of claim, to be professional negligence. The defendant has filed a plea and has instituted a counterclaim for payment of its fees in the sum of R16 850-00. The pleadings have closed.

The only ground advanced in support of the application was that no proper cause of action has been made out in the summons and that the action was frivolous. The contention does not avail the defendant: the opportune time for addressing this aspect was before filing a plea and then by way of exception. Not only has the defendant failed to do that, it has also taken further steps in the proceedings by filing a plea and instituting a counterclaim.

The application, in any event, is flawed in its premise: the plaintiff is an incola of this court and accordingly she cannot be compelled to furnish security (see *Magida v Minister of Police* 1987 (1) SA 1 (A) 15). But, the application is doomed to failure for another reason: the plaintiff does not possess any assets and she would not be able to pay the amount sought as security for costs. An order for payment of security for costs would accordingly deprive the plaintiff of her right of access to the courts, enshrined in s 34 of the Constitution.

In the result the application is dismissed with costs.

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