

SOUTH AFRICA / JUDGMENT

Oreways Mining SA Pty Ltd v Magoma Attorneys and Another (2625/2024) [2024] ZANCHC 112 (23 October 2024) [2024] ZANCHC 112

COURT

Northern Cape High Court, Kimberley

BEFORE

MC Mamosebo

CASE / FILE NUMBER

2625/2024

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IN THE HIGH COURT OF SOUTH AFRICA

NORTHERN CAPE DIVISION, KIMBERLEY

Case No:

2625/2024

In the matter between:

OREWAYS MINING SA (PTY) LTD

Applicant

and

MAGOMA ATTORNEYS

First Respondent

FIRST NATIONAL BANK

Second Respondent

Heard: 8/10/2024

Delivered: 23/10/2024

Summary: Urgent application. Applicant seeking interdictory relief in Part A pending Part B: Rule nisi restraining the first respondent from dissipating R7 000 000.00 held by the second respondent in trust. Order granted but reasons reserved. Application opposed by first respondent only. Amended order.

ORDER

In the result, the following order was made:

- (1) The applicant's non-compliance with the form and service prescribed in the Uniform Rules of Court is condoned and the application is heard on an urgent basis.
- (2) This order is returnable on 29 November 2024 to the unopposed motion court roll.
- (3) Pending a further order of this Court in Part B, a rule nisi is hereby issued calling on the first respondent to show cause, if any, on the return day, why the order, restraining and interdicting the first respondent from dissipating R7 000 000.00 (Seven Million Rand) held by the second respondent, should not be confirmed.
- (4) The order in paragraph 3 serves as an interim order with immediate effect.
- (5) The first respondent is granted leave to anticipate the return date and for the purposes of discharging or varying the provisional order on not less than 24 hours' notice of such application to the applicant.
- (6) The first respondent pay the costs of Part A of this application on the taxed scale B.

REASONS

FOR ORDER

Mamosebo ADJP

- [1] The applicant, Oreways Mining SA (Pty) Ltd, brought this application on an urgent basis seeking the court to condone its non-compliance with the Uniform Rules of the Court and issue a rule nisi to restrain and interdict the first respondent, Magoma Attorneys, from dissipating R7 000 000.00 held by the second respondent, First National Bank Limited. Mr David Magoma of Magoma Attorneys appeared on behalf of the first respondent while Ms A Katz represented the applicant.
- [2] The facts in brief as they appear in the papers are that on 30 August 2024, the applicant, being a global enterprise sourcing chrome concentrate, entered into a Sales and Purchase Agreement with the first respondent's client, Ndafara Resources (Pty) Ltd, for the supply of Chrome Ore Concentrate at 40 – 42%. On 09 September 2024 the applicant and the respondent, represented by Mr Magoma entered into a further agreement, for the Release of Funds in Magoma Attorneys' trust bank account. The applicant subsequently made a deposit of R7 million into the trust account of the first respondent.
- [3] Numerous correspondence was exchanged between the applicant and the first respondent in which the applicant was seeking an undertaking that the first respondent will not release the funds without its written instructions. The first respondent failed to furnish such undertaking. The applicants further wrote to the first respondent demanding the return of its deposit. This was met by a delayed response claiming that it was taking instructions from

the client. Neither the refund nor the undertaking happened. The gist of the demand by the applicant was to establish whether the funds are still being held by the first respondent in the trust account as contractually agreed.

[4] The requirements for interdictory relief are[1]:

- (a) prima facie right;
- (b) reasonable apprehension of harm; (c) balance of convenience and
- (d) no alternative remedy. The first respondent only 'noted' the above requirements in its answering affidavit without admitting or denying their truthfulness. Essentially, the applicant avers that it holds the rights to the R7 million which will only be released upon its written instructions. It was agreed that the money will be held in the first respondent's trust account on the stated terms. It was feared that should the court not grant such interdictory relief the first respondent will release the funds into its client's bank account. It would further be impossible to recover the funds if dissipated. The applicant had no other remedy but to approach the court on an urgent basis.

[5] The first respondent challenged the jurisdiction of this court to hear the urgent application claiming that the applicant should have referred the matter to arbitration. Countering this challenge, Ms Katz relied on Clause 25 of the Sales and Purchase Agreement (FA2) which stipulates:

'At the option of the parties desiring to bring any action or application against the other party concerning or arising out of this agreement, that action or application may be brought in any High Court having jurisdiction in respect of the party against whom the intended action or application is to be brought.

In the event of any party instructing an attorney to collect any overdue amounts owing in terms of this agreement, or taking any legal proceedings for recovery of any such amounts and/or for the enforcement of his/her rights in terms hereof, the defaulting party shall be liable and obliged to pay all legal costs incurred by such party as between attorney and own client, including usual collection commission in respect of overdue monies collected.'

It therefore follows that the challenge by the first respondent regarding jurisdiction had no merit and is dismissed.

[6] Of further significance, during the application I read out prayer 2 in the Notice of Motion, and asked Mr Magoma to address me on it. Prayer 2 as it appeared in Part A of the Notice of Motion read:

'Authorising and issuing a rule nisi to restrain and interdict the first respondent from dissipating R7 000 000.00 held by the second respondent.'

Mr Magoma indicated that there is no such money held in trust. An astonishing response which was not given in the answering affidavit

despite the persistent requests by the applicant for an undertaking. He further went on to explain that for the mining operation of his client to materialise he received an instruction from his client (Ndafara Resources (Pty) Ltd) to transfer the money to its banking account adding that Ndafara informed him that it has taken the issue up with the applicant. Mr Magoma repeated that there was no money held in trust. I granted the prayers in Part A and reserved the reasons thereto.

- [7] The answering affidavit is skimpy pertaining to the responses that were provided from the bar. The first respondent, as an officer of the court, should know better. He must also know how a trust account operates. A mere reading of the founding and answering papers show that had the first respondent furnished the undertaking there would not have been a need for the parties to litigate on an urgent basis.
- [8] I called the parties to my chambers on 14 October 2024 and alerted them to the fact that the order as sought was insufficient and proposed to amend the order as contemplated in Rule 42(1)(b) of the Uniform Rules of Court. Ms Majiedt, as the correspondent attorney for the applicant, received instructions from the instructing attorneys and I accordingly granted the amended order in Part A as reflected below.
- [9] In the result, the following order was made:
- (1) The applicant's non-compliance with the form and service prescribed in the Uniform Rules of Court is condoned and the application is heard on an urgent basis.
 - (2) This order is returnable on 29 November 2024 to the unopposed motion court roll.
 - (3) Pending a further order of this Court in Part B, a rule nisi is hereby issued calling on the first respondent to show cause, if any, on the return day, why the order, restraining and interdicting the first respondent from dissipating R7 000 000.00 (Seven Million Rand) held by the second respondent, should not be confirmed.
 - (4) The order in paragraph 3 serves as an interim order with immediate effect.
 - (5) The first respondent is granted leave to anticipate the return date for the purposes of discharging or varying the provisional order on not less than 24 hours' notice of such application to the applicant.
 - (6) The first respondent pay the costs of Part A of this application on the taxed scale B.

MC MAMOSEBO

JUDGE OF THE HIGH COURT

NORTHERN CAPE DIVISION

For the applicant: Adv. A Katz

Instructed by: Burrow Attorneys

c/o Majiedt Swart Inc

For 1st respondent: Mr D Magoma

Instructed by: Magoma Attorneys

[1] Setlogelo v Setlogelo 1914 AD 221 at 227

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Prepared on 10 October 2026 · Esheria