

SOUTH AFRICA / JUDGMENT

# Periamthambi v Jessica Gounden t/a Jessica Gounden and Associates (8590/2011) [2015] ZAKZDHC 71 (9 September 2015)

[2015] ZAKZDHC 71

## COURT

Kwazulu-Natal High Court, Durban

## BEFORE

A G Jeffrey

## CASE / FILE NUMBER

8590/2011

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IN THE HIGH COURT OF

SOUTH AFRICA

KWAZULU-NATAL LOCAL

DIVISION, DURBAN

Case no: 8590/2011

DATE: 09 SEPTEMBER 2015

In the matter between:

TITUS

PERIAMTHAMBI.....Plaint

iff

And

JESSICA GOUNDEN trading as

JESSICA GOUNDEN AND

ASSOCIATES.....Defendant

Coram: JEFFREY AJ

Heard: 8 September 2015

Delivered: 9 September 2015

Summary: Practice – Stated case

– Application for leave to appeal – Parties bound by the  
agreed facts and inferences

may not be drawn on a wholly imponderable

foundation nor may extraneous facts to those agreed upon in the  
stated case be introducedon appeal – Uniform Rule 33 and s 17  
of Act 10 of 2013

## JUDGMENT

Jeffrey AJ

- [1] This is an application for leave to appeal against my judgment that was delivered on 26 May 2015. I will continue to refer to the parties as the plaintiff and respondent respectively.
- [2] The matter came before me on 18 May 2015 as a stated case in terms of Uniform Rule 33. On the facts that were agreed upon by the parties I found, for the reasons stated in my judgment, that the amount of plaintiff's claim as against the Road Accident Fund, as at the date of the defendant's agreed breach of her mandate as an attorney when she failed to lodge the plaintiff's claim timeously, would have been limited to the sum of R25 000.00, notwithstanding the decision of the Constitutional Court in *Mvumvu and others v The Minister of Transport and another* 2011 (2) SA 473 (CC) and the provisions of the Road Accident Fund (Transitional Provisions) Act, No. 15 of 2012.
- [3] The plaintiff now seeks leave to appeal against the whole of my judgment to the High Court of South Africa, KwaZulu-Natal Division, Pietermaritzburg, on the following grounds:
- "(a) The Court erred in finding that if the defendant has performed in terms of her mandate, the absence of agreement, an inference could not be drawn on the stated case that the plaintiff's matter would not have been finally determined by settlement or judgment when the Transitional Act commenced on 13 February 2013.*
- (b) The Court erred in finding that in the absence of any agreement between the parties regarding the seriousness of the plaintiff's injuries, the provisions of the Transitional Act would not have applied for the following reasons:
- (i) at the pre-trial conference, the parties agreed that the matter would proceed on the issue of liability;
- (ii) accordingly whilst the plaintiff had obtained expert reports regarding the nature and extent of the plaintiff's injuries in terms of the provisions of Rule 36(9), the plaintiff had not obtained such support.
- (iii) the parties as at the date of this hearing on the issue of liability would therefore not have been in a position to agree on the seriousness of the plaintiff's injuries in the stated case.
- (c) The Court accordingly erred in finding at the liability stage that because the parties had not agreed that the plaintiff suffered serious injuries his claim for compensation would be limited to R25 000.00 notwithstanding the decision of the Constitutional Court in *Mvumvu and others v The Minister of Transport and another* 2011 (2) SA 473 (CC) and the provisions of the Road Accident Fund (Transitional Provisions) Act, No. 15 of 2012."
- [4] Sub-section 17(1) of the Superior Courts Act, No. 10 of 2013, sets out the approach of the Court in applications for leave to appeal:

*“(1) Leave to appeal may only be given where the judge or judges concerned are of the opinion that-*

- (a) (i) the appeal would have a reasonable prospect of success; or
  - (ii) there is some other compelling reason why the appeal should be heard, including conflicting judgments on the matter under consideration;
  - (b) the decision sought on appeal does not fall within the ambit of section 16 (2) (a); and
  - (c) where the decision sought to be appealed does not dispose of all the issues in the case, the appeal would lead to a just and prompt resolution of the real issues between the parties
- leave to appeal may only be given where the judge concerned is of the opinion that an appeal would have a reasonable prospect of success or that there is some other compelling reason why the appeal should be heard.”

[5] I am of the opinion that the proposed appeal does not have a reasonable prospect of success for the following reasons.

[6] First, where the parties have agreed a stated case, it is the duty of the Court to come to a conclusion on the case submitted to it. Both the parties and the Court are bound by the agreed facts as set out in the stated case. While Uniform Rule 33(3) does provide that 'the court may draw any inference of fact or of law from the facts and documents placed before it as if proved at a trial', the Court may not stray beyond those parameters: see *Nedbank Ltd v Pestana* [2008] ZASCA 140; 2009 (2) SA 189 (SCA) 194C-F at para [10]. It would, in my view, undoubtedly be straying beyond those parameters to have drawn the inference that the plaintiff suggests in paragraph (a) of his grounds of appeal *supra*, ought to have been drawn. To draw such an inference would have entailed the Court basing its decision on a wholly imponderable foundation. That, of course, would have been unsound.

[7] Secondly, it is impermissible for the plaintiff now to seek to introduce a proviso into the stated case, namely, that the extent of the plaintiff's injuries was still an issue to be determined. As I have said, both the parties and the Court are bound by the agreed facts in the stated case and this proviso was not recorded in the parties' statement nor was I informed of this at the time when the stated case was argued. If it was so recorded, or I was so informed, this would have taken to matter into the realms of an abstract or academic enquiry and I would have declined to hear it. After all, the Courts exist for the

## determination

of concrete enquiries and not to pronounce upon abstract questions or to advise upon differing contentions, however important: see *Geldenhuis and Neethling v Beuthin* 1918 AD 426 at 44. There was no application made by the parties to separate the issues of liability and quantum. Moreover, I was not informed by the parties when the stated case was argued that the stated case concerned the resolution of the issue of liability. The respondent

had expressly conceded liability in the stated case. The stated case was concerned with the issue of quantum and, specifically, whether or not any damages that the plaintiff may prove would be limited by the statutory cap of R25 000.00.

[8] I am also of the opinion that there is no other compelling reason why the proposed appeal should be heard. Counsel have not drawn my attention to any conflicting judgments on the matter under consideration. Nor am I aware of any.

[9] In the result, the application for leave to appeal is refused with costs.

A G JEFFREY

ACTING JUDGE

Appearances

Counsel for the plaintiff : Ms R Singh

Plaintiff's attorneys : Nolan Naicker & Co

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Counsel for the defendant : Mr I Pillay

Defendant's attorneys : Woodhead Bigby Inc.

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