

SOUTH AFRICA / JUDGMENT

Pipechem CC v Mittal Steel South Africa Ltd (7072/2007) [2009]

ZAWCHC 127 (2 March 2009)

[2009] ZAWCHC 127

COURT

Western Cape High Court, Cape Town

BEFORE

Van Reenen

CASE / FILE NUMBER

7072/2007

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ORDER

IN THE HIGH COURT OF SOUTH AFRICA(CAPE OF GOOD HOPE PROVINCIAL DIVISION)

CASE NUMBER: 7072/2007

DATE: 2 MARCH 2009

In the matter between:

PIPECHEM CC APPLICANT

and

MITTAL STEEL SOUTH AFRICA LIMITED RESPONDENT

VAN REENEN, J:

This matter consists of a number of applications brought by one of the members of Pipechem CC, Pipechem CC is the defendant in case number 7072/07. In that matter Mittal Steel has sued Pipechem for certain relief. It consists of a money claim.

Pipechem in that matter filed a plea, as well as a counterclaim, to which exception has been taken. That matter has been duly set down by the registrar of this Court for 29 May this year. The application brought consists of a number of sub-applications, in which various forms of relief are being sought. In summary the relief concerns firstly an application to have the notice of set down of the hearing of the exception set aside; then there is an application compelling Mr Venter who is an employee of Mittal Steel to make available certain information and documentation; then there is another application in which the relief sought, is not totally clear, but would appear to be directed at avoiding an unfair trial and is predicated on the presence of some "constitutional

point"; then there are further applications in which discovery of certain documentation and further particulars are being sought. I can just add that that relief seems to have crept in also into the relief sought in the other applications.

It would be fair to say that it is an understatement to categorise the applications as incoherent and confusing. They are incoherent and confusing because Mr Crabbia is a lay person who clearly has no knowledge of law and the practise thereof. He, because of his

perception of past experiences with legal representatives, believes that the interests of Pipechem will best be served by his representing it.

It will also be fair to say that that belief, in my respectful view is misplaced, but it has received the imprimatur of a judge of this Court to represent Pipechem. Mr Crabbia has articulated the desire to have the trial, disposed of as soon as

possible, and has suggested that Mittal Steel is dragging its feet for some obscure reasons, some of which he has articulated. It is not necessary for me to deal with the merits of the trial at this juncture and the least said about them the better.

The application to have the notice of set down of the exception set aside would be counterproductive to his avowed desire to have the trial matter finalised as soon as possible. In seeking that relief he has relied on the provisions of Rule 6(2), Rule 6(12)(c) and Rule 31(4), rules which are completely and totally inappropriate to the relief which he is seeking and it would appear to me that that part of the application has been doomed to fail right from the start. Accordingly that application, which is to be found at pages 76 and further of the record, is dismissed.

Equally devoid of merit is his reliance on Rule 16(4) for a finding that there is some constitutional issue that features. The way I understand the "constitutional point" is that there are material discrepancies, in a financial sense, between Mittal Steel and Pipechem, and that such discrepancy detrimentally affects Pipechem's ability to adequately defend itself against the relief which is being sought by the financially mighty Mittal Steel. That submission merely has to be articulated to expose its inability to withstand critical scrutiny. Accordingly that application (if that is what it can be called) and it to be found at page 110 and further of the record, is also dismissed.

There is a further application to be found at page 59 and further of the record, which relates to a subpoena issued in respect of Mr Venter. That application was predicated on the misconception that there would be a need to hear some form of evidence on argument etcetera, today in which, whatever he was required to produce, would be of relevance, in view of the direction these proceedings took, whatever the intended need for his presence was felt away, and it follows logically that that subpoena has to be set aside.

The remaining applications related to discovery in different forms as well as further particulars which were required to be provided. One finds those applications at pages 15, 19 and 33 of the record as well as remnants thereof in some of the other applications. It would appear that the

attempts at obtaining discovery and further particulars were actuated by a fear that the Mittal Steel and/or such other parties that form part of that group of companies would surreptitiously do away with certain documentation that might be of relevance in the trial. Mr Cooke, who represents Mittal Steel, has given an undertaking that no documents which might be relevant to the pending dispute in case

number 7072/07, would be destroyed, and after enquiries by Mr Crabbia it became clear that that undertaking was intended to cover all entities over which Mittal Steel exercises control. That objective

having been achieved, it would appear to me that any need to grant the relief set out in the applications appearing at paragraphs 15, 19 and 33 of the record have fallen away, at least for the time being. To the extent that those applications were premature, and I believe they were, it would appear to me that the appropriate order should be that they should be postponed until such time as the pleadings in case number 7072/07 have been closed. It would appear to me to be appropriate in those instances to order that the costs stand over to be determined at the trial.

As far as the costs of the applications which appear at page 59, 76 and 110 of the record are concerned, they in my view were devoid of any merit right from the start, and it would appear to me that it would only be appropriate that the question of costs should follow the result.

Mr Cooke has argued strenuously and competently for costs to be awarded on a punitive scale. Although his argument had some merit it would appear to me that one is dealing with a situation where an individual who is dominant in Pipechems affairs has taken it upon himself to represent it. His lack of skill and insight into these matters are palpable. I am not saying that in order to belittle him. He might be a very competent individual in his own area of expertise, but he has taken on a task which, because of his lack of training and understanding, accentuates his inadequacies for the task that he has undertaken.

As it might be unfair to saddle Pipechem, the corporate entity that he represents with the costs, because of the ill-conceived conduct of one of its members it would have given consideration to granting costs *de bonis propriis*. But Pipechem and its representative have not been alerted of that possibility. It appears to me that in view of the facts that I have enumerated, I should exercise my discretion and limit the costs in the last-mentioned three applications to costs on a party and party scale.

All I need to do in conclusion is to record the view that the objectives of all concerned would be served by an expeditious full-blown

ventilation of the live issues between the parties and that all conceivable efforts, should be taken in order to achieve that objective.

I also wish to add that *Donen AJ* in a reported case, *Mittal Steel SA Ltd v Piochem CCR*

- the parties in the action in which the exception has been raised - made an order in terms of which he directed that Mr Crabbia be authorised to represent Pipechem. It is rather interesting to note that the order in terms whereof Mr G A Crabbia is granted permission to represent the defendant is limited to legal proceedings instituted by Mittal Steel S A Ltd, the plaintiff against Pipechem CC, the defendant under case number 7072/07. The learned judge articulated the policy considerations which actuate courts in limiting corporate entities to be represented by individuals. He did so at page 647, paragraph 25 of the judgment.

They constitute cogent reasons for limiting the indulgence to allow individuals rather than legally qualifying practitioners to represent a corporate entity. Had it not been for the manner in which Donen JA had formulated his order I would have given serious consideration to withdrawing the indulgence granted. I took considerable time to acquaint myself with the applications which had been launched by Mr Crabbia because of the inept manner in which they have been prepared.

Counsel appearing for Mittal Steel in his heads of argument intimated that he experienced similar difficulties in attempting to identify the issues and succeeded admirably but not perfectly. The inept manner in which these applications had been drafted reflect a monumental lack of knowledge and skill on the part of Mr

Crabbia and made the task of this Court an extremely burdensome one.

These courts are intended to serve the public and to dispense justice equally between all parties who approach it for assistance. Courts struggle under an inordinate workload and accordingly need all the assistance that can be mustered in order to dispose of matters expeditiously. In this matter that ideal has been defeated. My fear is that until such time as a properly qualified legal practitioner is appointed to represent Pipechem, the proper dispensation of justice to it will be placed in danger. I can do no more but to repeat what I understand a number of my colleagues have told Mr Crabbia in the past, namely, that he should enlist the services of properly qualified legal practitioners, because I fear that an injustice might result unless that is done.

Mr Crabbia, I hope you will take that well-intended advice seriously.

VAN REENEN, J

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