

SOUTH AFRICA / JUDGMENT

Pitso and Others v Chabeli Molatoli Attorneys Incorporated (420/2023) [2024] ZASCA 94 (12 June 2024) [2024] ZASCA 94

COURT
Supreme Court of Appeal

BEFORE
Schippers, Mokgohloa, Mabindla-Boqwana,
Dawood, Seegobin

CASE / FILE NUMBER
420/2023

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THE SUPREME COURT OF APPEAL OF SOUTH AFRICA

JUDGMENT

Not Reportable

Case no: 420/2023

In the matter between:

Polo susan pitso no

FIRST APPELLANT

POLO SUSAN PITSO

SECOND APPELLANT

LIPALESA PITSO

THIRD APPELLANT

TLOTLISO PITSO

FOURTH APPELLANT

MASTER OF THE HIGH COURT, PRETORIA FIFTH APPELLANT

SELEKA ATTORNEYS SIXTH

APPELLANT

and

CHABELI MOLATOLI ATTORNEYS

INCORPORATED RESPONDENT

Neutral citation: Pitso and Others v Chabeli Molatoli Attorneys Incorporated (Case no 420/2023)
[2024] ZASCA 94 (12 June 2024)

Coram: SCHIPPERS, MOKGOHLOA and MABINDLA- BOQWANA JJA and DAWOOD and SEEGOBIN AJJA

Heard: This appeal was, by consent of the parties, disposed of without an oral hearing in terms of s 19(a) of the Superior Courts Act 10 of 2013.

Delivered: The judgment was handed down electronically by circulation to

the parties' representatives by email, publication on the Supreme Court of Appeal website and release to SAFLII. The date and time for hand-down is deemed to be 12 June 2024 at 11h00.

Summary: Agency and representation – at common law a mandate is in general terminable at the will of the principal – requirements of final interdict not met.

ORDER

On appeal from: Gauteng Division of the High Court, Pretoria (Ndlovane

AJ, sitting as court of first instance):

1 The appeal is upheld with costs.

2 The order of the high court is set aside and substituted with the following:

‘The application is dismissed with costs.’

3 The cross-appeal is dismissed with costs.

Mokgohloa JA (Schippers and Mabindla-Boqwana JJA and Dawood and Seegobin AJJA concurring):

[1] The central issue in this appeal is whether the first appellant, Mrs Polo Susan Pitso (Mrs Pitso), the widow and executrix in the estate of the late Mr Likano John Pitso (the deceased), was entitled to terminate the mandate of the respondent, a firm of attorneys, Chabeli Molatoli Attorneys Incorporated, who was responsible for the administration of the deceased's estate. The appeal is with leave of the Gauteng Division of the High Court, Pretoria (the high court).

- [2] The high court also granted the respondent leave to cross-appeal to this Court, despite making no adverse order against it. This error is compounded by the respondent's notice of appeal, in terms of which it seeks an order, inter alia, that the cross-appeal be upheld and that the 'termination of the applicant's mandate by the second respondent is declared unlawful'. That is the order on appeal before us. It follows that the cross-appeal is fatally defective.
- [3] Prior to the hearing of this appeal, the parties requested that it be disposed of without hearing oral argument in terms of s 19(a) of the Superior Courts Act 10 of 2013. This Court granted that request.
- [4] The issue must be considered against the following factual background. Mr Chabedi Molatoli (Mr Molatoli) is an attorney and the director of the respondent. The Molatoli and the deceased's family became close friends when the latter moved into the same residential estate where Mr Molatoli lives. Mr Molatoli gave legal advice to the deceased and assisted him in matters which involved the deceased and members of his family.
- [5] The deceased died intestate on 15 November 2021. Mr Molatoli assisted Mrs Pitso to report the estate to the fifth appellant, the Master of the High Court, Pretoria (the Master). On 18 November 2021, the respondent and Mrs Pitso concluded a written mandate and fee agreement (the agreement), in terms of which Mrs Pitso agreed to appoint the respondent as her agent should she be appointed as executrix of the deceased's estate (the estate). In terms of the agreement the respondent would be responsible for the administration of the estate and the drafting of the liquidation and distribution account, and would be entitled to charge a fee of 3.5% of the estate. The agreement reads:

'Should this mandate be terminated without any valid reason by the executrix which warrants such termination, [the] full agent fee shall be payable to Chabedi Molatoli Attorneys Inc. within seven (7) working days. Any legal costs shall be payable on [an] attorney and client scale by [the] defaulting party.'

On 30 December 2021, the Master issued a letter of executorship appointing Mrs Pitso as the executrix in the estate of the deceased.

- [6] On 1 April 2022, the respondent sent an interim invoice for services rendered to Mrs Pitso. She replied in an email sent on 3 April 2022 in which she stated that the respondent's first interim invoice was for more than 60% of the total funds available to finance the debts against the estate. She requested the respondent to provide a schedule of 'the amounts to be claimed pertaining to the entire process until closure of the estate account'. She also stated that, when she signed the agreement she was not in her right state of mind, and would not have done so had she known that the respondent would claim payment of the amounts stated in the invoice.

- [7] The respondent claimed to have replied to Mrs Pitso's email of 3 April 2022 through a letter explaining how the agreement had been entered into. However, that letter was not annexed to the founding affidavit. Nothing however turns on this.
- [8] On 28 April 2022, Mrs Pitso signed a document titled 'TERMINATION OF MANDATE', in terms of which she terminated the respondent's mandate and appointed Seleka Attorneys Incorporated (Seleka Attorneys), the sixth appellant, to administer the estate. On the same day, Seleka Attorneys sent the termination of mandate to the respondent. They informed the respondent that they would approach the Master to request that they be substituted in the place of the respondent. They requested the respondent to furnish them with its final account and enquired as to when Mrs Pitso's file could be collected.
- [9] On 10 May 2022, the respondent launched an urgent application in the high court seeking an order:
- (a) declaring the termination of its mandate invalid;
 - (b) that Mrs Pitso 'be interdicted from terminating the [respondent's] mandate, unless with the leave of the court on reasonable grounds';
 - (c) that the Master 'be ordered not to recognize the purported termination and appointment of Seleka Attorneys as agents of [Mrs Pitso]'; and
 - (c) that Mrs Pitso be removed as executrix of the estate and she be ordered to return the letters of executorship to the Master.
- [10] The application came before Makhoba J, who struck it from the roll for lack of urgency. It subsequently came before Ndlovane AJ. Despite referring to this Court's decision in *Liberty Life Group Ltd and Others v Mall Space Management CC t/a Mall Space Management (Liberty Group)*,^[1] in which it was held that it is against public policy to force the principal to retain an agent against her will, the court made an order declaring the termination of the respondent's mandate unlawful. The court ordered the first to the fourth appellants to pay the respondent's costs.
- [11] The application was misconceived. An applicant for a final interdict must show a clear right; an injury actually committed or reasonably apprehended; and the absence of similar protection by any other remedy.^[2] The respondent simply failed to make out a case for the relief sought. It did not establish the requisites for the grant of a final interdict, more specifically a clear right and the absence of an adequate alternative remedy. A final interdict is extraordinary robust relief. It is therefore important that the applicant establish all the requisites for such an interdict.
- [12] It is trite that a principal is entitled to revoke a mandate of agency in these circumstances. As this Court stated in *Liberty Group*:^[3]

‘It would be against public policy, to coerce a principal into retaining an individual as his agent, when he no longer wishes to retain him as such. If the termination of the mandate has prejudiced the agent his remedy lies in a claim for damages and not in an order compelling the principal to retain him as his agent in the future.’

[13] The respondent is not without a remedy. If Mrs Pitso’s termination of the mandate prejudiced the respondent, its remedy lies in a claim for damages. After all, its claim is nothing more than one for payment of its fees. One can just imagine the chaos that would result if every attorney whose mandate is terminated were to approach court for an order that his or her services be retained.

[14] The high court did not make an order for the removal of Mrs Pitso as an executrix of the estate. In any event, the allegations in the founding affidavit that Mrs Pitso ‘acted in her own interest and not in the interests of the creditors of the estate’ is not supported by any facts. No more need be said about this relief.

[15] For the above reasons, I make the following order:

1 The appeal is upheld with costs.

2 The order of the high court is set aside and substituted with the following:

‘The application is dismissed with costs.’

3 The cross-appeal is dismissed with costs.

F E MOKGOHLOA

JUDGE OF APPEAL

Written submissions:

For the appellants: RM Mahlatsi with O Tommy

Instructed by: Ketwa Incorporated, Pretoria

Wesi Attorneys, Bloemfontein

For the respondent: C Molatoli

Instructed by: Nwanzule Attorneys Inc

Cooper Attorneys, Bloemfontein

[1] Liberty Life Group Ltd and Others v Mall Space Management CC t/a Mall Space Management
[2019] ZASCA 142; 2020 (1) SA 30 (SCA).

[2] Setlogelo v Setlogelo 1914 AD 221 at 227; Olympic Passenger Services (Pty) Ltd v Ramlagan
1957 (2) 382 (D).

[3] Op cit fn 1 para 36.

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