

SOUTH AFRICA / JUDGMENT

Polokwane Local Municipality v Parkpoint (Pty) Ltd (1236/2023) [2023] ZALMPPHC 110 (15 November 2023) [2023] ZALMPPHC 110

COURT

Limpopo High Court, Polokwane

BEFORE

Kgatla

CASE / FILE NUMBER

1236/2023

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REPUBLIC

OF SOUTH AFRICA

IN

THE HIGH COURT OF SOUTH AFRICA

(LIMPOPO

DIVISION, POLOKWANE)

CASE

NO: 1236/2023

In

the matter between:

POLOKWANE

LOCAL MUNICIPALITY

APPLICANT

and

PARKPOINT

(PTY) LTD

RESPONDENT

JUDGMENT

KGATLA AJ

[1] The applicant, a local municipality, has brought an urgent application seeking an order to reinstate and/or revive the rule nisi issued on 10 February 2023. In addition thereto, it seeks an order confirming the rule nisi.

[2] The rule was obtained on an ex parte basis. It reads as follows:

"1. This application is heard on an ex parte basis and/or as one of urgency, condoning non-compliance with the prescribed time limits for the service of documents in terms of Rule 6(12) of the Uniform Rules of this Honourable Court.

2. A rule nisi is granted returnable on Tuesday the 18 May 2023 at 10h00 in the morning or so soon thereafter as the matter may be heard, calling upon all the respondents to show cause, if any, as to why a final order should not be granted in the following terms:

2.1 Directing and/or ordering the Respondent to vacate all the Applicant's premises where it is illegally operating and managing the parking bays on behalf of the Applicant within the Polokwane CBD pending the outcome of the arbitration proceedings between the parties.

2.2 The officials of the Applicant with the assistance of the South African Police Services are authorised to take all necessary and reasonable steps to implement the orders contained in paragraphs

2.2.1 and 2.2.3, including if necessary to arrest and take into lawful custody of the South African Police Services any person who contravenes the order of the above Honourable Court.

2.3 This order will operate as a rule nisi pending the return date of this matter before this Honourable Court.

2.4 Granting the Applicant such further and/or alternative relief as this Honourable Court may deem fit in the circumstances.

2.5 Costs of this Application, including costs of counsel."

[3] On 18 May 2023, the rule was extended to 23 May 2023. On 23 May 2023 the operation of the rule was suspended pending the outcome of the arbitration proceedings.

[4] The arbitration proceeded and on 13 July 2023 the Arbitrator made an award to the effect that the respondent's response therein disclosed no defence to the applicant's claim. The claim succeeded. In addition, the Arbitrator made an award to the effect that since the quantum of the claim had been separated from the merits, he could not, at that stage, make an award sounding in money. As a result, the determination of the quantum was postponed sine die and can be enrolled for hearing in the event of the parties being unable to agree thereon.

- [5] Based on the ruling by the Arbitrator, at the hearing of this matter, I then directed parties to file supplementary heads of argument on whether the arbitration proceedings have been finalized in view of the fact that the determination of quantum was separated from that of merits and the arbitrator did not pronounce on it. Parties have since complied with the court's directive.
- [6] Two issues that serve before me, whether this matter is sufficiently urgent to be enrolled and heard as an urgent application and whether the suspensive condition imposed upon the suspension of the rule has been fulfilled. The suspensive condition is the finalization of the arbitration proceedings.
- [7] Although the parties argued the issue of urgency, same is misplaced. These proceedings are governed by the provisions of rule 6(11) of the Uniform Rules. The provisions read as follows:
- "Notwithstanding the foregoing subrules, interlocutory and other applications incidental to pending proceedings may be brought on notice supported by such affidavits as the case may require and set down at a time assigned by the registrar or as directed by a judge."
- [8] There can be no dispute that the current application is an interlocutory application. This means that the normal times periods set laid down by rule 6 do not apply. Consequently the provisions of rule 6(12) do not apply in these proceedings. The application serves properly before me.
- [9] What is left for determination is whether the conditions imposed by the order of Naude-Odendaal J have been fulfilled.
- [10] The aforesaid order suspended the operation of the rule nisi pending the finalization of the arbitration proceedings. The question therefore is whether the arbitration proceedings have been finalized.
- [11] The respondent is disputing that the arbitration proceedings have been finalized and has raised a point in limine in its answering affidavit that the application is premature and must be dismissed. According to the respondent, the arbitration proceedings are still pending before the Arbitrator as what was determined was the merits of the disputed issues, the determination of the quantum thereof is still pending.
- [12] Replying to the point in limine raised by the respondent, the applicant denied that the arbitration proceedings are still pending. According to the applicant, the Arbitrator made a ruling in favour of the applicant and therefore, the rule nisi suspended has to be revived and should be confirmed. Further that the issue of quantum was postponed sine die on condition that where parties are unable to agree on the amounts so payable to the applicant the matter would be set down for consideration of such.

[13] The following paragraphs of the arbitration award are relevant to the question: "160. I am therefore of the opinion that the Defendant has disclosed no defence to the Plaintiff's Claim and that the Claim must succeed. Since the quantum of this Claim had been separated for separate hearing (unless the parties of course can agree on the actual amounts) and since I have not been provided with the prime interest rate "approved by counsel in that fiscal year", I cannot at this stage make an Award sounding in money."

"185. I make the following Award in respect of the Claimant's Claim:

185.3 The determination of the amount so due to the Claimant by the Defendant is postponed sine die and may be enrolled for hearing in the event of the parties being unable to agree on the amounts so payable by the Defendant."

[14] The applicant concedes that Naude-Odendaal J suspended the operation of the rule nisi order pending the finalization of the arbitration proceedings. It however avers that the arbitration proceedings have been finalized because of the following:

14.1 the arbitration award finalized the proceedings as the applicant is claiming the total of 25% that has been disclosed and declared by the respondent.

14.2 the literal interpretation of clause 185.3 of the arbitration award is that if the amounts so due to the plaintiff by the respondent are unknown or is not clearly disclosed, the determination thereof is postponed sine die. However, if the amounts due are known or determinable, there would be no need to postpone same sine die. The arbitrator also made provision therein when he stated that "... in the event of the parties." He has foreseen the possibility of the matter not coming back to him due to the documents and statements made during the hearing.

14.3 therefore there is no need for the matter to be enrolled for quantum as the respondent discovered the financial report in the hearing.

[15] The respondent on the other hand contends that Naude-Odendaal J's order suspended the rule nisi pending the finalization of the arbitration proceedings and therefore proceedings have not been finalized because:

15.1 the order does not suspend the rule nisi pending the issuing of the arbitration award but pending the finalization of the arbitration proceedings.

15.2 the order is to be interpreted in the same manner as any document or instrument and on any interpretation or construction, it suspended the rule nisi pending the finalization of the arbitration proceedings and not outcome of the arbitration award.

15.3 That the words "arbitration proceedings" are defined in section 1 of the Arbitration Act 42 of 1965 as:

"... proceedings conducted by an arbitration tribunal for the settlement by arbitration of a dispute which has been referred to Arbitration in terms of an Arbitration Agreement".

15.4 that the arbitration proceedings were intended to settle the dispute pertaining to the respondent's alleged indebtedness to the applicant in an amount of R12,000,000.00 (Twelve Million Rand) as set-out in the statement of claim.

15.5 the dispute for the payment of an amount of R12,000,000.00 as claimed in the arbitration proceedings by the applicant is pending before the Arbitrator, and in fact, as expressly confirmed by the Arbitration award, is postponed sine die.

15.6 there is a dispute on the amounts to be paid to the applicant.

15.7 although the applicant in its statement of claim has claimed an amount of R12, 000,000.00, the applicant has since in its correspondence dated 8 August 2023, following the arbitration award claimed an amount of R3,000,000.00 (Three Million Rand). Such amount is disputed by the respondent, and in those circumstances the applicant is enjoined to set the matter down for hearing before the Arbitrator for the adjudication and determination of the quantum.

15.8 Based on the above, the arbitration proceedings are still pending.

[16] The applicable principle to the interpretation of court orders is summarized by the Constitutional Court as follows in *Eke v Persons*[1]:

"The starting point is to determine the manifest purpose of the order. In interpreting a judgment or order, the court's intention is to be ascertained primarily from the language of the judgment or order in accordance with the usual well-known rules relating to the interpretation of documents. As in the case of a document, the judgment or order and the court's reasons for giving it must be read as a whole in order to ascertain its intention."

[17] In the of *Department of Transport and Others v Tasima (Pty) Ltd; Tasima (Pty) Ltd and Others v Road Traffic Management Corporation and Others*[2] the Constitutional Court added the following:

"....As in the case of any document, the judgement or order and the court's reasons for giving it must be read as a whole in order to ascertain its intention. If on such a reading, the meaning of the judgement or order is clear and unambiguous, no extrinsic fact or evidence is admissible to contradict, vary or qualify, or supplement it."

[18] Applying the above principle on *Naude- Odendaal J's* order, I find that the order suspended the operation of the rule nisi pending the finalization of the arbitration proceedings and not pending the arbitration award. It would not serve purpose to suspend the order pending the determination of one issue and not of all issues.

[19] As it is in the arbitration award, the issue of quantum has been postponed sine die and the Arbitrator advised the applicant to enroll it for hearing in the event the parties are unable to agree on the amounts payable. Although the applicant argues that the 25% due to it has been disclosed by the respondent in the arbitration hearing, the respondent is disputing the amount and as such there is no agreement on the amounts payable. This is shown in the letter of 8 August 2023 wherein the applicant demanded payment of R3,245,936.00 and the

respondent refused to pay.

[20] As a result of the fact that the respondent is disputing the amount, the applicant must enroll the matter for the

determination

of quantum as per the Arbitration Award.

[21] In the circumstances the following order is made:

21.1. The application is dismissed.

21.2. The applicant shall pay the costs of this application.

M KGATLA

ACTING JUDGE OF THE HIGH COURT

LIMPOPO DIVISION, POLOKWANE

APPEARANCES Heard on 29 August 2023

Judgment

delivered on 15 November 2023 For the Applicant LC Nemukula Instructed by Kgatla Inc For the Respondents D M MOLEPO Instructed by Edward Nathan Sonnenbergs Inc

[1] 2016

(3) SA 37 (CC) at para 29

[2] 2018

(9) BCLR 1067 (CC) at para 17

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