

SOUTH AFRICA / JUDGMENT

Randfontein Local Municipality and Another v Quill Associates (Pty) Ltd (36264/2013; 36265/2013) [2015] ZAGPPHC 638 (15 September 2015) [2015] ZAGPPHC 638

COURT

North Gauteng High Court, Pretoria

BEFORE

S. Potterill

CASE / FILE NUMBER

36264/2013; 36265/2013

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IN THE HIGH COURT OF SOUTH AFRICA

(GAUTENG DIVISION, PRETORIA)

Case Number: 36264/2013 and 36265/2013

DATE: 15/9/2015

In the matter between:

RANDFONTEIN LOCAL MUNICIPALITY

First Applicant

WESTONARIA LOCAL MUNICIPALITY

Second Applicant

and

QUILL ASSOCIATES (PTY) LTD

Respondent

JUDGMENT:

APPLICATION FOR LEAVE TO APPEAL

POTTERILL J

- [1] The applicants are applying for leave to appeal to the Supreme Court of Appeal or alternatively the Full Court of the Gauteng Division against the judgment and orders handed down herein on 31 July 2015.
- [2] On behalf of the applicants it was argued that the leave should be granted as there is a reasonable prospect that another court could come to a different decision.
- [3] In terms of section 17 of Superior Courts Act 10 of 2013, the real test to be applied is not whether there is a reasonable prospect that another court can come to a different decision, but that the appeal would have a reasonable prospect of success. Pertaining to the merits of the matter I am satisfied that there are no prospects of success on appeal.
- [3.1] I found the respondent's witness to be a credible witness providing sound reasons for his version of events.
- [3.2] The judgment dealt with the averred improbabilities in the respondent's version as pointed out by the applicant and was found not to be improbabilities.
- [3.3] It was common cause between the parties that the written agreement was only between WRDM and the respondent and not the applicants. The arrangement between the respondent and the applicants was thus orally concluded. The plaintiff on a preponderance of probabilities proved the terms of this oral agreement.
- [3.4] There was no evidence led by Westonaria to rebut the terms of the oral agreement as testified to by the respondent's witness; this despite the fact that Mr. Du Toit of Westonaria was at court, but was not called as a witness.
- [3.5] On behalf of Randfontein, Mr. Hay's evidence was of no use to the first applicant as he could only testify that he "lived with the idea in his head" that Randfontein had a licence. In the application for leave to appeal counsel for the defendants admitted that this was not a defence to the respondent's claim, but persisted that the respondent's version was improbable.
- [4] The defendants' reliance on the refused recusal application as a ground of appeal is a red herring. The application for recusal was made directly after the court refused an application to allow an undiscovered document into evidence. The record shall reflect that the applicants' counsel could not give a single reason why the document was not discovered despite them being in possession thereof timeously. The record shall also reflect that the introduction of the document was for an ulterior motive that was exposed by the respondent's counsel in argument which the defendants' counsel in reply unashamedly admitted as being correct. It is startling that the applicants now in the application for leave to appeal admit that they misled the court with the reason as to why they wanted to enter the document. The applicants then proceeded to the next tactic; to request my recusal. I am satisfied that the record shall reflect that no reasonable person can ever perceive bias in any actions of the court.

- [5] Although not argued or set out in their grounds for the application for leave to appeal the court is aware that a “reasonable royalty” is a new concept in the Act and has not been pronounced on. There is however no prospects of success on appeal, because the applicants simply put no evidence before the court pertaining to what a reasonable royalty is. There would accordingly be no evidence before another court except that put before this court by the respondent. The respondent on a preponderance of probabilities proved the reasonable royalty by referring to what another municipality was prepared to pay for such a royalty as well as what the market value would be by means of a tender which could not be disputed by the applicants’ expert witness.
- [6] The application for leave to appeal is dismissed with costs. The costs to include the costs of senior counsel.

S. POTTERILL

JUDGE OF THE HIGH COURT

CASE NO: 36264/2013 and 36265/2013

HEARD ON: 11 September 2015

FOR THE 1st and 2nd APPLICANTS: ADV. C. GEORGIADES

INSTRUCTED BY: Matseke Attorneys

FOR THE RESPONDENT: ADV. S.D. WAGENER SC

INSTRUCTED BY: A.L. Maree Incorporated

DATE OF JUDGMENT: 15 September 2015

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Prepared on 11 October 2026 · Esheria