

SOUTH AFRICA / JUDGMENT

Road Accident Fund v HW Theron Inc Attorneys and Others (30076/2021) [2021] ZAGPPHC 709 (30 September 2021) [2021] ZAGPPHC 709

COURT

North Gauteng High Court, Pretoria

BEFORE

Mbongwe

CASE / FILE NUMBER

30076/2021

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IN

THE HIGH COURT OF SOUTH AFRICA
GAUTENG
DIVISION, PRETORIA

CASE NO:

30076/2021
In

the matter between:

ROAD
ACCIDENT
FUND
Applicant
and
H.W.
THERON INC.
ATTORNEYS
First Respondent
SOUTH
AFRICAN LEGAL PRACTICE COUNCIL
Second Respondent
SHERIFF
OF THE COURT, PRETORIA EAST
Third Respondent
ABSA
BANK
Fourth
Respondent

JUDGMENT

MBONGWE J.

INTRODUCTION

[1] This is an urgent application wherein the applicant seeks an order in prayer 2 of the Notice of Motion as follows:

2. “ That a rule nisi be issued calling upon the first respondent and any interested parties to show cause, if any, to this honourable Court why the following order should not be made final:

2.1 Any writ of execution based upon a court order that compels the Applicant to make payment to the first respondent’s trust account or any attachment and removal of the Applicant’s assets by the Third Respondent pursuant thereto is immediately suspended in terms of Section 173 of the Constitution, alternatively Rule 45A of the Uniform Rules of Court pending the finalisation of the South African Police Services and the Legal Practice Council investigations within six months from the date of this Court’s order.

2.2 That the Applicant be authorised to pay the capital amounts due to the affected clients of the First Respondent directly to the banking accounts of those claimants, which banking details and contact details must be provided to the Applicant by the First Respondent within 2 days of the confirmation of this rule.

3. That the order sought under paragraph 2.1 shall operate as an interim order, with immediate effect, pending the confirmation or discharge of the rule nisi.”

BASIS FOR THE RELIEF SOUGHT

[2] There are a few grounds proffered on the papers as the applicant’s basis for launching this application, namely,

2.1 To prevent the attachment of the assets of the applicant by the third respondent at the behest of the first respondent. It is common cause that the first applicant has had writs of execution issued in its favour for the recovery of the amount totalling R14 265 694-32 consisting of capital amounts in settlement of four clients of the first respondent and taxed bills of costs. The applicant alleges that the attachment of its assets, including bank accounts, would hamper its business operations and prevent the applicant from discharging its obligations to the public, particularly the victims of motor vehicle accidents.

2.2 Internal investigations conducted by the applicant have allegedly unearthed serious impropriety on the part of the first respondent resulting in a criminal case being opened with the SAPS for investigations,

2.3 Investigations of the first respondent's professional conduct by the second respondent have been held in abeyance pending the outcome of investigations by the SAPS.

IMPUGNED CONDUCT OF FIRST RESPONDENT

[3] At para 9 of the founding affidavit, the applicant mentions specific aspects that its Forensic Investigation Division have uncovered giving rise to the suspicions of impropriety on the part of the first respondent and underpinning the launch of this application, being;

3.1 Inflated and/or fraudulent claim items on the bills of costs emanating from the first respondent's costs consultants and the first respondent, by extension, which include;

3.2 A high number of fictitious consultations with claimants and other experts, including the hours billed pertaining to preparations for court amounting to more than 24 hours in a day;

3.3 Information the applicant has obtained from two claimants who denied the number of consultations purportedly claimed for by the first respondent on invoices submitted to the applicant for payment;

3.4 One claimant who kept a diary confirmed only three of the 53 consultations claimed for by the first respondent;

3.5 Another claimant denied that the first respondent had accompanied her to various medical experts for medico legal examinations including that

the first respondent had been present during the consultations
/examinations concerned.

The applicant alleges to be in possession of the affidavits of the relevant claimants which it has handed over to the SAPS.

- [4] The applicant avers further that it will suffer a potential loss of R14 265 694 -32 if the Court were to order that payment of this amount be made to the first respondent's trust account :- a payment that would constitute a contravention of the provisions of the Public Finance Management Act 1 of 1991.
- [5] In cementing its allegation of its suspicion of the first respondent alleged impropriety, applicant alleges that the first respondent had, upon gaining knowledge of the internal investigations of its bills of costs, withdrawn the bills concerned and later submitted new bills drawn by different costs consultants showing a much less number of consultations and hours spent.
- [6] The applicant asserts a Constitutional and statutory duty to suspend payment to a trust account in instances where it "has prima facie grounds to suspect impropriety, pending the resolution thereof."
- [7] It need be stated that it was not disputed that the issue of bills of costs the applicant's investigations refer to was resolved between the applicant and the first respondent and due payments made on the basis of the bills submitted by the first respondent's new costs consultants.

BASIS OF THE APPLICANT'S CAUSE OF ACTION AND RELIEF SOUGHT

- [8] The relief sought by the applicant appear to be based mainly on past incidents in which it had erroneously made double payments to the trust banking accounts of various firms of attorneys, including the first respondent. The failure by the recipients of the double payments to pay back the erroneous second payment received to the applicant resulted in the courts deciding that no further payments by the applicant should be made into the trust accounts of those attorneys. The applicant relies mainly on this decision in seeking the relief in PART A (the present hearing).

ANALYSIS

AND FINDINGS

- [9] The circumstances in the matter of the attorneys before Basson J are distinguishable in various respects from those concerning or relating to the first respondent in the present matter.

9.1 The bills of costs to which investigations by the SAPS and the LPC refer

were submitted in 2018 and resolved between the parties. I must hasten to state that nothing in this observation should be construed to mean that the investigations relating to those bills of costs should not be pursued. Of relevance in the present matter, however, is that the bills of costs herein have no bearing to the pending investigations, were taxed and approved by the Taxing Master and that the first respondent has not been found guilty or suspended from practice in relation to the previous bills of costs.

9.2 Regarding the double payment the first respondent had received, it has

not been denied that the first respondent had on his own accord repaid the second payment to the applicant; hence he is not amongst the attorneys to whom the decision of Basson J refers.

9.3 The applicant has not alleged that it is challenging the legitimacy of the

capital amounts concerned in this case. In fact, the applicant's willingness to pay those amounts bar into the trust account of the first respondent, is an indication and an acknowledgement of legitimacy thereof and of its liability to pay. The applicant's

allegation that it stands to suffer a loss and be non-compliant with the PFMA is astonishing and plainly without merit.

[10] To be entitled to the relief sought, the applicant must allege and prove the following;

10.1 That it has a clear right,¹

10.2 That there is imminent danger or reasonable comprehension of the infringement of that right,

10.3 That the applicant has no alternative remedy, but to approach the court.

The applicant does not meet any of these requirements.

CONCLUSION

[11] The applicant has not made out a case against the first respondent entitling it to the relief sought. The application consequently stands to be dismissed.

ORDER

[12] The following order is made:

1. The application is dismissed.
2. The applicant is ordered to pay the costs on the opposed scale.

M. MBONGWE J

JUDGE OF THE HIGH COURT

APPEARANCES

For the Applicant: Adv. Luderitz SC

With Adv Schoeman

And Adv Motsie (Ms)

Instructed by: Malatji & Co Attorneys

For the 1st Respondent: Adv J.F Grobler

With Adv J. Bam

Instructed by:

HW Theron Incorporated

DATE OF HEARING: 06 JULY 2021

JUDGMENT

ELECTRONICALLY TRANSMITTED ON 30 SEPTEMBER 2021.

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