

SOUTH AFRICA / JUDGMENT

Robberts v Ekurhuleni Metropolitan Municipality (02858/16) [2018] ZAGPJHC 407 (9 March 2018) [2018] ZAGPJHC 407

COURT

South Gauteng High Court, Johannesburg

BEFORE

TS Kekana

CASE / FILE NUMBER

02858/16

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IN THE HIGH COURT OF SOUTH AFRICA,
GAUTENG

LOCAL DIVISION, JOHANNESBURG

CASE NO: 02858/16

Not reportable

Not of interest to other judges

9/3/2018

In the matter

between:

Robberts A C
B Applicant/Plaintiff
and
Ekurhuleni Metropolitan
Municipality Respondent
/Defendant

JUDGMENT

KEKANA, AJ:

- [1] This is an interlocutory application by the Plaintiff to compel the Defendant's discovery in terms of Rule 35 (7).

- [2] On the 01st February 2017, the Plaintiff delivered a notice in terms of Rule 35(3) to the Defendant. The Defendant replied to the Rule 35 (3) by producing three further documents not previously discovered. The first Defendant refused to discover the documents requested by the Plaintiff in terms of Rule 35 (3) on the basis that they are not relevant to the issues in the pleadings.
- [3] The Plaintiff requested the first Defendant to produce the following documents:
- 3.1. A detailed statement reflecting all credits and debits passed over the period of twelve months preceding as well as twelve months succeeding 3 October 2014 on the Zama Care Centre Municipal Account, administered by and in the first Defendant's accounting records under account number 3301152728 in respect of erven of Zama Care Centre described as unit: Portion 3 of farm 26 Putfontein;
- 3.2. All payments confirmations (be that electronic transfers or honoured cheques) of all payments made by the first Defendant to Zama Care Centre during the period of 12 months succeeding 3 October 2014;
- 3.3. Zama Care Centre Banking details confirmation letter (if payments were made electronically).
- [4] The Plaintiff's request for discovery of the above mentioned documents is based on a delictual claim relating to unlawful arrest, detention and subsequent payment of the sum of R4000.00 made in terms of the diversion programme to Zama Care Centre.
- [5] In his particulars of claim, the Plaintiff claimed damages for contumelia, deprivation of freedom, distress, discomfort, post traumatic distress, pure economic loss and/or loss of income.
- [6] The First Defendant replied to the Notice in terms of Rule 35 (3) by producing the following documents:
- 6.1. Accused choice in respect of the charge of exceeding the speed limit by more than 30km/h;
- 6.2. Contract in terms of the diversion programme; and
- 6.3. Ekurhuleni Metropolitan Municipality receipt for proof of payment of the sum of R4000.00 into the Zama Care Centre municipal account
- [7] The first Defendant stated in their discovery affidavit that the information and documentation required by the Plaintiff as set out in paragraph 3.1-3.3 are not relevant to the issues regarding the pleadings of the matter.
- [8] Rule 35 (3) of the Uniform Rules of Court states that if any party believes that there are, in addition to documents or tape recordings disclosed as aforesaid, other documents (including copies thereof) or tape recordings which may be relevant to any matter in question in the possession of any party thereto, the former may give notice to the latter requiring him to make the same available for inspection in accordance with subrule (6), or

to state on oath within ten days that such documents are not in his possession in which event he shall state their whereabouts, if known to him.

- [9] The Plaintiff's application to compel the Defendants discovery in terms of Rule 35 (7), is based on claim G, which he pleaded as a financial loss in the amount of R4000.00.
- [10] The first Defendant in their answering affidavit disputed the relevance of the documents requested. They further stated that the information and documents sought to be produced are for an entity which is not a party to the proceedings and are irrelevant for the purposes of the applicant's cause of action. However, first Defendant produced the following documents which were annexed to its answering affidavits:
- 10.1. Annexure AVDB1, being the screenshot from the system showing payments into the Zama Care Centre;
- 10.2. Annexure AVBD3, being a letter from the first Defendant's attorneys attaching municipal accounts of Zama Care Centre from 29 September 2014 - 28 January 2015 and 06 June- 13 June 2017 respectively.
- [11] The Plaintiff's counsel argued that the denial of relevance of the documents sought to be produced by the first Defendant, is inadequate and lacks particularity.
- [12] Counsel for the Plaintiff also argued that the fact that the first Defendant produced the municipal accounts of Zama Care Centre, that led to a train of enquiry which may either advance the Plaintiff's case or damage the first Defendants case. She argued that these documents confirm that the money supposedly paid into Zama Care Centre Municipal account was flushed out of the account. She further argued that the first Defendant ought to disclose where the money was moved to.
- [13] Counsel for the Plaintiff further argued that there is sufficient reason for the Court to go behind the oath of the First Defendant's deponent in that it is relevant for first Defendant as a state organ to prove the end destination of the money paid by the Plaintiff in terms of the diversion programme.
- [14] The first Respondent's counsel argued that the documents that Plaintiff required the first Defendant to discover were irrelevant for purposes of his cause of action.
- [15] The first Defendant's counsel argued that the Plaintiff bears the onus to prove why it is relevant for the documents to be discovered. She argued that the Plaintiff has failed to explain the relevance of the items listed, except to impute misconduct where there is none.
- [16] The first Defendant's counsel also argued that claim G, for which this application sought to compel the first Defendant to produce documents, is no longer in dispute in the pleadings should it be found at the trial that the arrest and prosecution have been conducted unlawfully, then there is sufficient proof that the Plaintiff did make a payment of R4000.00.

- [17] The first Defendant's counsel argued against the submission made by the Plaintiff's counsel that the documents produced by first Defendant, which were annexures to their answering affidavit, led to a train of enquiry which may either advance the Plaintiff's case or damage the first Defendants case. She submitted that the Plaintiff is relying on speculation and that there is no factual basis for the Plaintiff to suggest that there is now misappropriation of funds by the first Defendant.
- [18] It is clear that the Court has discretion to allow further discovery and that such discretion must be judicially exercised.
- [19] It has further been held in a series of cases that when a party to an action refuses to make discovery of or to produce for inspection any documents on the grounds that they are relevant to the dispute, the Court is not entitled to go behind the oath of that party unless reasonably satisfied that the denial of the relevancy is incorrect.
- [20] Rule 35(3) could never have been intended to mean that the mere subjective belief (or even that a mere statement as to the existence of such belief) by the party seeking further discovery, as to the relevance of additional documents, is by itself enough to require the other party on notice to make available for inspection such of those documents as are in his possession.
- [21] It was held in *Swissborough Diamond Mines (Pty) Ltd AND Others v Government of the Republic of South Africa and Others*[1] that the Plaintiff is only entitled to discovery of documents relevant to issues in pleadings. It was further held that the party is required to identify portions thereof on which reliance is placed and indicate the case which is sought to be made on the strength thereof.
- [22] It was held in *Rellams (Pty) Ltd v James Brown and Hamer Ltd*[2] that each application of this nature has to be considered on its own facts and circumstances and whether on the totality thereof an applicant has shown on a balance of probabilities that there are documents which require production.
- [23] The question that this court has to pronounce itself on is whether the documents called to be produced are relevant to any matter in the action.
- [24] Having regard to the case law, I am by no means persuaded by the Plaintiff that there is any relevance between the documents they requested from first Defendant and the main issue between the parties. There is therefore not sufficient information to entitle me to go behind the first Defendant's deponent's affidavit, which asserts that none of the documents requested has any relevance whatsoever to the issues raised in the pleadings.
- [25] It is also not reasonable to suppose that there is anything in the Zama Care Centre's Municipal accounts which may throw light on the main issues.

[26] In the result, I have come to the conclusion that the Plaintiff's application cannot succeed.

[27] The Plaintiff's application is dismissed with costs.

TS Kekana

Acting Judge of the High Court, Johannesburg

Appearances:

On behalf of the applicant : Adv CJ Mouton

Instructed by

: JC Van Der Merwe Attorneys

On behalf of the respondent : Adv S Cliff

Instructed by

: Tiaan Smuts Attorneys

Date of hearing

: 08 February 2018

Date of

judgment

: 09 March 2018

[1] 1999

(2) SA 279 (T)

[2] 1983

(1) All SA 47 (N)

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