

SOUTH AFRICA / JUDGMENT

Rudnat Projects CC v Nketoana Local Municipality and Others (2870/2013) [2020] ZAFSHC 119 (12 June 2020) [2020] ZAFSHC 119

COURT

Free State High Court, Bloemfontein

BEFORE

S Naidoo

CASE / FILE NUMBER

2870/2013

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IN

THE HIGH COURT OF SOUTH AFRICA,

FREE

STATE DIVISION, BLOEMFONTEIN

Case

No: 2870/2013

In

the matter between:

RUDNAT
PROJECTS
CC Applicant
/ Plaintiff
and
NKETOANA LOCAL
MUNICIPALITY First
Respondent / Defendant
PHUMELELA LOCAL
MUNICIPALITY Second
Respondent/Defendant
SETSOTO LOCAL
MUNICIPALITY Third
Respondent Defendant
DIHLABENG LOCAL
MUNICIPALITY Fourth
Respondent /Defendant

JUDGMENT

CORAM: NAIDOO J

JUDGMENT BY: NAIDOO J

HEARD ON: 18 MAY 2020

DELIVERED ON: 12 JUNE 2020

- [1] This is an application for Leave to Amend the plaintiff's Particulars of Claim. The first respondent objects to application.

The third respondent has not participated in this application. For convenience, I shall refer to the parties as they are cited in the main action. Due to the national lockdown regulations to curb the Covid-19 pandemic, physical appearances in court by parties, legal representatives and others was kept to a minimum. For this reason, I chose to deal with the matter in terms of section 19 (a) of the Superior Courts Act 10 of 2013, by disposing of the application without hearing oral argument. The parties were amenable to this. In terms of the Heads of Argument filed, Adv S Grobler SC represented the plaintiff, Adv R Shepstone represented the first defendant. Although Mr Ponoane represents the third defendant, the latter chose not to object to or oppose this application, and consequently took no part in this application.

- [2] The trial of this matter commenced before me on 17 March 2020. After the first witness for the plaintiff testified, the plaintiff

indicated that it wished to apply for an amendment of its Particulars of Claim, as a result of certain matters arising from the testimony, and particularly the cross-examination, of its first witness. I pause to mention that at the commencement of trial proceedings, Adv Grobler, for the plaintiff, advised that the plaintiff no longer proceeds against the 2nd and 4th defendants, as the matter against those defendants had become settled.

- [3] The plaintiff seeks to amend its Particulars of Claim, in essence, to incorporate, in the alternative to the main claim, a claim for unjust enrichment as a result of the work it had done, (as detailed in the main claim), and as a further alternative, a claim for damages it suffered as a result of a misrepresentation made by the first respondent and/or its duly authorised representative. The quantum of such damages is alleged to be based on the invoices appended to the Particulars of Claim.

- [4] In the objection filed by the first respondent, it alleges that the amendment should be refused on the grounds that the plaintiff

introduces two new causes of action, which bear no resemblance to the original claim. In addition the objections are also grounded on the assertion that the claim based on enrichment has become prescribed, while the claim for damages, based in delict is excipiable. Both parties cited case law in support of their respective contentions. It must be borne in mind that this

matter is partly-heard before me. In my view any in-depth examination of the merits of the objection may well be inappropriate as the court must hear further evidence in the trial and any pronouncements on such merits at this stage may well bear on the hearing of further evidence and consideration of the merits of the case as a whole. The court needs only adjudicate, at this stage, the issue of whether an amendment is permissible. Thereafter the procedures prescribed in the Rules of Court must be followed in furtherance of the matter.

[5] The relevant provisions of Uniform Rule 28 direct as follows:

“(1) Any party desiring to amend any pleading or document other than a sworn statement, filed in connection with any proceedings, shall notify all other parties of his intention to amend and shall furnish particulars of the amendment.”

- (9) A party giving notice of amendment in terms of subrule (1) shall, unless the court otherwise directs, be liable for the costs thereby occasioned to any other party.
- (10) The court may, notwithstanding anything to the contrary in this rule, at any stage before judgment grant leave to amend any pleading or document on such other terms as to costs or other matters as it deems fit.”
- [6] It is trite that a court hearing an application for an amendment has a discretion whether or not to grant it. Such a discretion must, of course, be exercised judicially, and the exercise of such discretion is informed by a number of factors which the court must consider. Generally, the very important consideration is that of prejudice. An amendment will not be permitted if it will cause the other party such prejudice that it cannot be cured by an order for costs and/or a postponement. The ability of the court to grant material amendments, therefore, is limited largely by the extent of the prejudice or injustice to the other party.
- [7] The first respondent’s objection that the plaintiff seeks to introduce two new causes of action does not automatically preclude

the court from granting the amendment. Our courts have held in many matters that it may be convenient to incorporate fresh causes of action in original proceedings. An amendment which introduces a new cause of action will, however, only be allowed if no prejudice is occasioned thereby. It has equally been found by our courts that there is no objection in principle to a new cause of action or defence being added by way of amendment, even though it has the effect of changing the character of the action and necessitating the reopening of the case for fresh evidence to be led, if that is necessary to determine the real issue between the parties. The amendment must always be bona fide (See Erasmus, Superior Court Practice, D1-335, and the cases referred to therein).

- [8] In the present matter, the plaintiff led its first witness, who was also thoroughly cross-examined. The respondents were, therefore made aware of the case they have to meet. The amendments sought by the plaintiff are in essence pleas in the alternative to the original claim, and arise directly from the evidence tendered by its witness. The amendment, if it is granted, will not be unduly prejudicial to the first respondent and such inconvenience or

prejudice it may suffer can be ameliorated by an appropriate order for costs. In addition the first respondent, and even the third respondent, will logically be afforded the opportunity to amend their respective pleas accordingly. It will be open to them to raise the issues in the first respondent's objection as points in limine, special pleas or exceptions to the Particulars of Claim, if they so choose. The hearing to adjudicate these latter- mentioned issues will be the appropriate forum to delve into the merits of such points in limine, special pleas or exceptions, as both parties will be given the opportunity to present appropriate arguments and the court will be in a position to decide if such issues are dispositive of the action.

[9] With regard to the issue of costs of the application, the plaintiff submits that the first defendant should be ordered to pay its costs, presumably because it views the opposition to the amendment as unnecessary. The first respondent for its part seeks a costs order against the plaintiff. Rule 28 (9) and (10), set out above indicate that the party seeking the indulgence of an amendment shall be liable for the costs of an amendment, but the discretion of the court to order otherwise is acknowledged. Subrule (10) also permits the granting of an amendment at any time prior to judgment being delivered. While I cannot find that the first respondent's opposition was frivolous or unwarranted, I point out that public funds are involved in this matter and circumspection in how those funds are utilised is called for. Having said that, I see no reason for this court to depart from the directives of subrule (9) of Rule 28.

[10] In the circumstances, I make the following order:

10.1 The plaintiff is granted leave to amend its Particulars of Claim;

10.2 The plaintiff is directed to pay the costs of the application;

10.3 The first defendant is granted leave to amend its plea, if it so chooses;

10.4 The amendment of the plaintiff's Particulars of Claim must be effected not later than 10 days after the grant of this order;

10.5 The amendment of first respondent's plea, if any, must be effected in terms of the Rules of Court.

S NAIDOO J

On behalf of Plaintiff: Adv. S Grobler SC

Instructed by: Peyper Attorneys

(S Meades)

101 Olympus Drive

Helicon Heights

Bloemfontein

On behalf of 1st Defendant: Adv. R Shepstone

Instructed by: Lawrence Melato Attorneys

Vereeniging

c/o Rossouws Attorneys

119 Pres Reitz Ave

Westdene

(Ref: MKW3/0003 T3 (JHC/AB))

On behalf of 3rd Defendant: Mr MJP Ponoane

Instructed by: Ponoane Attorneys

103 First Floor Library House

44 West Burger Street

(Ref: Mr MJP Ponoane)

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Prepared on 10 October 2026 · Esheria