

SOUTH AFRICA / JUDGMENT

Sambit Holdings (Proprietary) Limited v Marais and Another (90194/2015) [2021] ZAGPPHC 206 (8 April 2021) [2021] ZAGPPHC 206

COURT

North Gauteng High Court, Pretoria

BEFORE

G.T. Avvakoumides

CASE / FILE NUMBER

90194/2015

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IN THE HIGH COURT OF
SOUTH AFRICA
(GAUTENG DIVISION,
PRETORIA)
CASE
NO: 90194/2015
REPORTABLE
OF
INTEREST TO OTHER JUDGES
REVISED

In the matter between:

SAMBIT
HOLDINGS (PTY) LTD
Applicant
and
JOHAN
MARAIS
First
Respondent
PAUL
MOJAPELO
Second
Respondent
This

judgment is handed down electronically by circulation to the parties' representatives by way of email. The date of the judgment shall be deemed to be 8 April 2021.

JUDGMENT

AVVAKOUMIDES AJ

INTRODUCTION:

1. This is an application for leave to appeal against a judgment of this Court dated 9 December 2019 in terms of which an application by the plaintiff to amend its replication was dismissed with costs.
2. Section 17 of the Superior Courts Act, 10 of 2013 provides as follows:

“(1) Leave to appeal may only be given where the judge or judges concerned are of the opinion that-

 - (a)(i) the appeal would have a reasonable prospect of success; or
 - (ii) there is some other compelling reason why the appeal should be heard, including conflicting judgments on the matter under consideration”
3. I have had regard to the written and oral submissions on behalf of the applicant. I am not persuaded that the appeal would have a reasonable prospect of success. Before dealing with the reasons for my decision it is necessary to clarify that, insofar as condonation was necessary for the undue delay by the applicant’s attorney to upload the application on CaseLines and to prosecute the application for leave to appeal, such condonation is granted.
4. Furthermore, insofar as there may have been misunderstanding between the parties as to whether condonation was granted in accordance with prayer 1 of the original notice of motion in respect of the application for amendment, although not specifically stated in my judgment of 9 December 2019, I did exercise discretion in considering the aspect of condonation and this is the precise reason why I heard full argument on the merits of the application for amendment. I do not deem it necessary to provide any reasons save to state that the respondents’ attorneys did undertake not to object to the late filing of the application for amendment.
5. I now turn to the reasons for this judgment. It is settled law that a party has to make out his case in the particulars of claim. A party relying on a cession must allege and prove such cession. Only in special or exceptional circumstances may a party, by amendment of its particulars of claim, be permitted to introduce a cause of action it did not have at the time when summons was issued. This is what the applicant has sought to do without showing any special or exceptional circumstances.
6. Rule 18(6) provides as follows:

“Whether the contract is written or oral and when, where and by who it was concluded and if the contract is written a true copy thereof or of the part relied on in the pleading shall be annexed to the pleading”.

7. The cessionary, namely Absa, on 8 November 2015, which is the date upon which summons was served, was the only party entitled to claim in respect of the relevant debt for which the applicant seeks to hold the respondents liable. The applicant contended that on 1 November 2016 Absa re-ceded the principal debt and that the applicant became vested with the claim retrospectively.
8. The pleadings in this case closed on 30 March 2016, before the re-cession of the ceded debt.
9. At the stage when the applicant (as plaintiff) sought to amend its replication to include the re-cession of the book debt from Absa to the applicant, it is clear from the facts that the applicant could not amend its particulars of claim to introduce the re-cession because the claim against the respondents would have prescribed.
10. The applicant, now faced with the dilemma of prescription, thus sought to reintroduce the re-cession by way of an amendment to the replication and this, in my view, is prejudicial to the respondents.
11. I do not deem it necessary to delve into a discussion relating to the authorities relied on by the applicants in the application for leave to appeal, save to state that the issues dealt with in such authorities are distinguishable on the facts before me.
12. Accordingly, on the facts before me, I am not persuaded that the appeal would have a reasonable prospect of success. The application for leave to appeal is thus dismissed with costs.

G.T. AVVAKOUMIDES

ACTING JUDGE OF THE HIGH COURT

GAUTENG DIVISION, PRETORIA

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Prepared on 14 October 2026 · Esheria