

SOUTH AFRICA / JUDGMENT

Seraj Transport (Pty) Ltd v Dikopane Project Management CC and Others (81004/2016) [2018] ZAGPPHC 365 (18 May 2018)

[2018] ZAGPPHC 365

COURT

North Gauteng High Court, Pretoria

BEFORE

Nochumsohn

CASE / FILE NUMBER

81004/2016

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REPUBLIC OF SOUTH AFRICA
IN THE HIGH COURT OF SOUTH
AFRICA

GAUTENG DIVISION, PRETORIA

(1)

NOT REPORTABLE

(2)

NOT OF INTEREST TO
OTHER JUDGES

CASE

NO. 81004/2016

18/5/2018

In

the matter between:

SERAJ
TRANSPORT
(PTY)LTD
Applicant
and
DIKOPANE
PROJECT MANAGEMENT
CC
First
Respondent
TSETSHIPO
TRADING
CC
Second

Respondent
NORTH
WEST TRANSPORT INVESTMENT (PTY) LTD
Third
Respondent
ABSA
BANK
Fourth
Respondent

JUDGMENT

NOCHUMSOHN (AJ)

1. This is an application for the setting aside of a Warrant of Execution issued in these proceedings for the recovery of taxed costs, pending the finalisation of the action issued under Case No. 89774/16.
2. This matter came before me on the opposed Motion Roll on 16 May 2018, when the Applicant's attorney appeared on behalf of the Applicant and sought a postponement at the commencement of the proceedings, tendering the Respondents' wasted costs, albeit without service of a formal Notice of Motion. Such application was predicated upon a lack of funds to enable the briefing of counsel, coupled with a desire to brief counsel to make further submissions to motivate the granting of an intended application for leave to supplement the Applicant's papers. The Respondents' counsel opposed the postponement upon grounds of the prejudice that it would bring to the Respondents, the Applicant's failure to have filed a Replying Affidavit, the interests of justice, and the fact that the issue for determination is simple and straight-forward.
3. For the reasons set out below in this Judgment, there is no substance to the main application. A postponement could not cure a fatally defective application, which was still-borne, at the outset. For this reason, I dismissed the application for a postponement, as ultimately it would have served no purpose.
4. The Applicant brought an anti-dissipation interdict, against the Respondents, by way of urgency. Such urgent application came before the Honourable Justice Fabricius on 21 October 2016. On that day, the urgent application was struck off the Roll, with costs, for want of urgency.
5. Whilst it was not part of the Order of Fabricius J, the Applicant avers in the Founding Affidavit to this Application that the Court, in the course of the urgent proceedings, expressed the view that the matter was not urgent and that the Applicant's remedy was to issue summons for debatement of account.

6. Pursuant thereto, the Applicant issued summons against the Respondents, on the same facts and cause of action, under Case No. 89774/2016, which action is still pending.
7. By virtue of the foregoing, the Applicant's case is that the Writ of Execution for the costs issued by the Respondents is premature, as the action is still pending under Case No. 89774/2016.
8. The Warrant of Execution was issued for the recovery of the respective sums of R4 142.58 and R82 738.38, pursuant to the taxation of Bills of Cost, in respect of which the Allocators were validly signed by the Taxing Master on 18 April 2017. It is quite clear that the Bills were taxed in the implementation of the costs order handed down by Fabricius J on 21 October 2016.
9. Whilst it is not necessary for me to revisit the Order of Fabricius J, there is no need to revisit such Order. The urgent application was struck from the roll for want of urgency. The Applicant in this application was ordered to bear the costs.
10. If the execution of such costs order was to be suspended pending the outcome of the future action to be instituted, such determination and condition would have been made part and parcel of the order. The Order of Fabricius J is clear in its terms, leaving the Applicant in this application, liable to pay such taxed costs, irrespective as to the outcome of the action instituted under Case No. 89774/2016.
11. Accordingly, this application is without any merit. There is no basis for this court to suspend or stay the Warrant of Execution which was validly issued in respect of taxed costs, which are due, owing and payable.
12. In the circumstances I make the following Order:
 - 12.1. This Application is dismissed.
 - 12.2. The Applicant is to bear the taxed costs of the Respondents for this Application, to be taxed upon the scale as between party and party.

NOCHUMSOHN,G

ACTING JUDGE OF THE HIGH COURT

On behalf of Applicant: Attorney Collin Nciki

c/o Arthur Maisela Corporate Legal Advisors

On behalf of the

First and Second Respondent: Advocate A M Heystek

Instructed by:

Couzyn Hertzog & Horak Inc

Date of Hearing: 16 May 2018

Date of Judgment: 18 May 2018

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Prepared on 14 October 2026 · Esheria