

SOUTH AFRICA / JUDGMENT

Simpson v Minister of Justice and Constitutional Development and Others (81791/2018) [2020] ZAGPPHC 298 (18 June 2020) [2020] ZAGPPHC 298

COURT

North Gauteng High Court, Pretoria

BEFORE

J Holland-Muter

CASE / FILE NUMBER

81791/2018

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REPUBLIC OF SOUTH AFRICA

IN THE HIGH COURT OF SOUTH AFRICA

(GAUTENG DIVISION, PRETORIA)

CASE NO: 81791/2018

In the matter between:

DARREN SIMPSON

Applicant/Plaintiff

And

MINISTER OF JUSTICE AND CONSTITUTIONAL

DEVELOPMENT

1STRespondent / 1stDefendant

DEPARTMENT OF JUSTICE AND CONSTITUTIONAL

DEVELOPMENT

2NDRespondent / 2nd Defendant

CHIEF LITIGATION OFFICER N O

ROONEY ISSACS

3rd Respondent/ 3rd Defendant

DEPUTY ACTING STATE ATTORNEY

NO IAN GOUGH

4th Respondent/ 4th Defendant

OFFICE MANAGER NO VERONICA KRUGER

5th Respondent/ 5th Defendant

JUDGEMENT:

APPLICATION FOR LEAVE TO APPEAL

Before: J HOLLAND-MUTER AJ:

- [1] The applicant, an admitted attorney and employed by the Office of the State Attorney in Bloemfontein, applies for leave to appeal against the judgment handed down on 12 December 2019 granting an exception against the particulars of claim issued by the plaintiff. The crux of the order was held that the particulars of claim lacked the necessary averments to sustain a cause of action and that the defendants (excipients in the application) were prejudiced in their defence of the claim as standing. The applicant was granted 20 days to amend the particulars of claim.
- [2] The applicant proceeded to amend his particulars of claim and he filed a substantive Bundle "L" consisting of 106 pages on 7 January 2020. The contents thereof is not before this court and as far as I could determine from the papers no further steps were taken by the respondents in this regard. It is unnecessary to pronounce any view on the contents thereof by this court.
- [3] The applicant then proceeded to file the Application for Leave to Appeal dated 24 March 2020. This application is a combination of leave to appeal against the judgement handed down by this court on 12 December 2019 and a judgement by Rabie J on 24 February 2020 in another application in the dispute between the parties.
- [4] Several E-mails were exchanged between the Appeals clerk at the High Court and the applicant to determine who the judges were who granted any of the orders against the applicant to enable the clerk to forward the application to the judge(s) involved. It was only during May 2020 established that the appeal (or part thereof), should be forwarded to myself. I received the notice during May and had a date for the hearing set down (12 June 2020 was set down). It must be remembered that it could only be heard during an acting term of office.

- [5] This application in my view is defective because it seems to be a merger of two different applications. The two judges never presided together in one application in this matter. Without elaborating on the grounds of appeal listed by the applicant it is safe to conclude that the contents thereof is mostly irrelevant to the exception entertained by this court . The application refers to instances before other Judges of this division, from Thlapi J; Jansen van Nieuwenhuizen J and Strijdom AJ. This court cannot and will not comment on any of those appearances.
- [6] The applicant further raises an issue he had with my registrar, Me Mogoro. He accuses her of animosity towards him outside court which is without any substance. He fails to state that he, as the plaintiff, approached her in her office without the presence of his then attorney of record to have file documents. Her version is not before the court and no further comments are necessary . This court will also not respond to any accusations made before other judges.
- [7] The applicant apparently terminated the services of his attorney and continued in person. Again it is not for this court to comment.
- [8] The applicant filed a further Supplementary Application for Leave to Appeal on 27 April 2020. This supplementary application was filed in person but it is not clear whether this document supplements the first application or replaces the first application. This supplementary application is once again a "combined" application in respect of the judgements by this court and by Rabie J. In my view this application is also defective as it "combines"
- two separate matters.
- [9] The applicant annexed a proposed draft order to his application moving for the following relief:
- 9.1 That the judgement before Judge Holland-Muter has been successfully appealed;
- 9.2 The court order before Judge Rabie is rescinded and successfully appealed;
- 9.3 That the whole of this record be forwarded to the Legal Practice Council to investigate gross dishonesty of the Defence Counsel Advocate Loselo Puseletso into his fitness as a fit and proper person to be struck off the roll;
- 9.4 That the costs be paid on a scale of either attorney and/own client Costs and/or costs de boni propriis depending on whether Defence Counsel Advocate Loselo Puseletso wishes to defend the Fraud committed during arguments before the Honourable Court;
- 9.5 A directive be issued that all legal costs incurred be paid to the Plaintiff/Applicant's attorney within five (5) days of the bill being
- [10] The applicant confirmed during arguments that he is the author of the proposed draft order. I have serious doubts whether the applicant can persist with the relief sought. He as a practising attorney should know what follows an application for leave to appeal and that

only a court of higher standing is the competent court to grant the relief sought in the first two prayers. The prayer regarding payment of costs by the other parties is likewise not competent. The applicant seems to forget that a taxation should take place to establish the amount payable. Mere delivery of an account is not sufficient.

- [11] Turning to the application for leave to appeal the respondents argued that the granting of an exception affording the plaintiff time to amend the defective particulars of claim, is not a final order and therefore not appealable. By amending the particulars of claim and filing Bundle "L", any possible appeal became obsolete and at most academic of nature. The purpose of an appeal no longer exists but for a possible appeal against a cost order. This is not the case of the appellant.
- [12] The grounds for appeal listed in the application do not address any of the aspects of the judgement but is a mere continuation regurgitation of previous unfounded accusations of fraudulent conduct against the defence counsel.
- [13] The applicant admitted that he received the notice of exception on 26 February 2020 via his E-mail. He however tried to make it an issue that he never indicated in writing that he will receive service via E-mail. In my view the reason for written acceptance of electronic service is only to prevent a party to allege that service of the document did not take place.
- [14] His argument that he was unaware of the exception and therefore caught by surprise during the hearing of the exception cannot succeed because on his own version he received the notice of exception at least eight months prior the hearing. By trying to introduce the affidavit dated 4 May 2020 by Sandy Young during the application for leave to appeal as evidence is not permissible. There is no application to introduce further new evidence at this stage.
- [15] It is clear from Part 2 (Communication of data messages) in section 26 of the Electronic Communications and Transactions Act 25 of 2002 that an acknowledgement of receipt of data message may be given by any conduct of a party sufficient to indicate to the originator that the data message has been received. It has never been the applicant's version that he never received the exception. He even appointed an attorney to oppose the application on 18 November 2019. See Erasmus, Superior Court Practice Vol 1 D1-41-42.
- [16] The practice notice and heads of arguments filed by the applicant likewise contains no reason why the application should be granted. The applicant merely continued with the allegations of fraud allegedly committed by the defence counsel. These are serious allegations and Mr Puseletso objected to the continued allegations levelled by the applicant. The court requested the applicant to refrain from the allegations but the applicant.
- [17] The applicant filed an undated supplementary affidavit complaining about his employers conduct during March 2020 regarding the payment of his salary. Again this is irrelevant to the issue before this court and I refused any reference thereto.

[18] Section 17 of the Superior Courts Act, 10 of 2013 is clear as to when leave to appeal be granted. An applicant faces a higher and stringent threshold as in the past to convince a court that there is a reasonable prospect of success on appeal. See Erasmus, Superior Court Practice Vol 1 p A2-SS. In my view there is no prospect of success for the applicant of any success on appeal and the application ought to fail.

NON-RELATED ASPECTS:

[19] The applicant tried to introduce a notice of complaints towards his erstwhile attorney, Rochelle Maistry, into the record. He lodged the complaint with the KwaZulu-Natal Provincial office of the Legal Practitioners Council but the court refused to allow him to address any aspect thereof in this matter. Similarly he filed a letter addressed to the Deputy Judge President/Judge President on 19 May 2020 complaining of abuse of court process and requesting immediate Judicial Case Management. Again the court refused any reference to this letter when the applicant argued the application for leave to appeal.

ORDER:

The application for Leave to Appeal is dismissed with costs.

J HOLLAND-MUTTER

Acting Judge of the Pretoria High Court

Date heard: 12 June 2020

Date handed down: 18 June 2020

Place on Caselines.

TO: DARREN SAMPSON (Applicant in person)

E-mail: rochelle.m@gmail.com

072 176 2335

AND TO: STATE ATTORNEY (PRETORIA)

Ref: Ms Mogale/6642/18/ZS3

E-mail: loselop@loftusadv.co.za

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Prepared on 14 October 2026 · Esheria