

SOUTH AFRICA / JUDGMENT

South African Securitisation Programme (Rf) Limited v Papegaai Liquor Investments (Pty) Ltd and Others (2279/2023) [2025] ZAMPMHC 27 (15 May 2025)

[2025] ZAMPMHC 27

COURT

Middelburg High Court, Mpumalanga

BEFORE

Phahlamohlaka

CASE / FILE NUMBER

2279/2023

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IN THE HIGH COURT OF
SOUTH AFRICA
MPUMALANGA DIVISION,
MIDDELBURG

CASE

NO: 2279/2023

(1) REPORTABLE: NO

(2) OF INTEREST TO

OTHER JUDGES: NO

(3) REVISED: YES

15/05/2025

In the matter between:

SOUTH AFRICAN
SECURITISATION
PROGRAMME (RF)
LIMITED
APPLICANT
and
PAPEGAAI LIQUOR
INVESTMENTS (PTY) LTD FIRST RESPONDENT
LUANITA
VERMEULEN
SECOND RESPONDENT
OUTSOURCE GROUP SA
(PTY) LTD THIRD
RESPONDENT

In re: PROGRAMME (RF)
LIMITED PLAINTIFF
PAPEGAAI LIQUOR
INVESTMENTS (PTY) LTD FIRST
DEFENDANT
JUANITA
VERMEULEN
SECOND DEFENDANT
Delivered: This
judgment was handed down electronically by circulation to the
parties' legal representatives by email. The
date and time for
hand-down is deemed to be 10:00 on 15 May 2025.

JUDGMENT

Phahlamohlaka AJ

- [1] This is an application for the joinder of the Third Respondent, Outsource Group SA (Pty) Ltd ("Outsource"), as the Third Defendant in the main action.
- [2] The Third Respondent is opposing the application and raises a point in limine that the deponent to the founding affidavit lacks the requisite authority to depose to the affidavit.
- [3] The Applicant (Plaintiff in the main action) issued summons against the First and Second Respondents (First and Second Defendants in the main action) as a result of the Master Rental Agreement entered into on or about 22 June 2021, between the First Respondent and Outsource, in terms whereof it rented certain equipment.
- [4] The Applicant alleges in the particulars of claim that it acquired all the rights, title and interest in and to the Master Rental Agreement as follows:[1]

"7.1 On or about 9 May 2007 to 15 May 2007 and at Waverly, alternatively Midrand, Outsource Group (Pty) Limited, it represented by a truly authorized representative and Sunlyn rentals (Pty) Ltd, it represented by a duly authorized representative, entered into a written Main Cession Agreement, a true copy whereof is annexed hereto marked Annexure "B1" and the material terms of which were, inter alia, that the parties thereto agree that Outsource Group SA (Pty) Limited could offer contracts of cession to Sunlyn Rentals (Pty) Ltd from time to time and that an acceptance of any such offer would be governed by the terms therein contained and would take place by way of payment by Sunlyn Rentals (Pty) Ltd to Outsource (Pty) Ltd of the purchase price less any permitted deductions.

7.2 Consequent upon the conclusion of the Main Cession Agreement constituted by annexure "B1" hereto, and on or about 27 July 2021, Outsource Group SA (Pty) Ltd, it represented by a duly authorized representative, and at Waverley, alternatively at Midrand, duly offered to Sunlyn Rentals (Pty) Ltd, it represented by a duly authorized representative, a cession of the contract constituted by annexure "A" hereto.

7.3 Consequent thereon and on or about 27 July 2021, Sunlyn Rentals (Pty) Limited duly accepted the offer so made by Outsource Group SA (Pty) Limited, as more fully contemplated in clause 4.1 of annexure “B1” by effecting payment to Outsource Group SA (Pty) Limited of the necessary precious price.

7.4 On or about 29 March 2006 and at Waverley, sunlyn Rentals (Pty) Ltd and Sasfin Bank Limited, each represented by duly authorized representatives, entered into a written Main Cession Agreement and Addendum to Main Cession Agreement, a true copy whereof is annexed hereto marked annexure “B2”.

7.5 In terms of annexure “B2”:

7.5.1 Sunlyn Rentals (Pty) Limited, as cedent, would offer all and contracts for sale and cession to Sasfin Bank Limited for the purchase price from time to time; and

7.5.2 Sasfin Bank Limited could accept or reject the offer in the latter's sole and absolute discretion; and

7.5.3 Acceptance of an offer on the part of Sasfin Bank Limited would take place on payment by Sasfin Bank Limited to the supplier of the equipment for and on behalf of Sunlyn Rentals (Pty) Ltd of the provisional purchase price less any deductibles permitted thereon...”

[5] The First and Second Respondents pleaded to the particulars of claim, and among others, they averred that no consensus was reached in relation to a material term of the agreement, i.e. the equipment that formed the subject of the purported agreement, and that the purported agreement is void ab initio.

[6] This prompted the Applicant to launch the current application for the joinder of Outsource as the third defendant in the main action. In the founding affidavit, the Applicant confirms that the Rental Agreement forming the subject matter of this action was concluded between the First Respondent and the Third Respondent (Outsource), who in turn ceded all its rights in and to the Rental Agreement to Sunlyn Rentals (Pty) Ltd who in turn ceded the agreement to Sasfin Bank Limited, pursuant to a main Cession Agreement. Sasfin Bank Limited then onwards sold to the Applicant, pursuant to the Sale and Transfer Agreement, the rights, title and interest in and to the Master Rental Agreement, as well as the equipment forming the subject matter thereof.

[7] The Applicant further avers in its plea that the First Respondent has denied that the Rental Agreement is enforceable according to its terms, in that at the time of signature of the equipment scheduled to the Master Rental Agreement, the equipment was not described therein. As a consequence of which, there was no consensus reached in relation to the material terms of the agreement, being the equipment which forms the subject matter of the purported Rental Agreement concluded with the Third Respondent. The First Respondent pleads that for those reasons the Rental Agreement is void ab initio.

- [8] The allegations raised by the First Respondent in its plea necessitated the joinder of the Third Respondent to this action.
- [9] The Third Respondent raised a point in limine, contending that the deponent to the founding affidavit, Kuhgen Govender, notes that he is in the employ of Sasfin Bank Limited. Sasfin Bank Limited is not a party to these proceedings nor has any substantiation or document been presented by Sasfin Bank Limited being duly represented to this Court in substantiation of this averment.
- [10] The Third Respondent further avers that, as is evident from the contents of the founding affidavit, the cause of action that the Applicant seeks to enforce and to which action the Applicant wishes to join the Third Respondent is not a Rental Agreement but rather a cession. Further, the deponent has not confirmed that he has personal knowledge relating to the Cession Agreement that may be in place between the parties and/or third parties. The Third Respondent therefore contends that the deponent has no personal knowledge regarding the Cession Agreement it wishes to enforce and therefore cannot be duly authorized to depose to the affidavit.
- [11] In reply, Kuhgen Govender stated the following:[2]
- “5. The allegations contained in these paragraphs are denied.*
6. In amplification of the denial, I maintain that the role of Sasfin Bank Limited (Sasfin) is administrative and managerial in nature. This, in the administration and management of the rental agreements, Sasfin also takes up the role of enforcing the agreements. In these circumstances, I am therefore the correct person to depose to the founding affidavit as well as this affidavit on behalf of the applicant.
7. I submit that although the purpose of seeking to join Outsource Group (Pty) Ltd (Outsource) is to enforce the cession agreement, my role as deponent to this affidavit as well as the Founding Affidavit is not ousted simply by the fact that the agreement in question is not a rental agreement.
8. I say for the reason that the session agreement is an agreement incidental to the rental agreement and in the course of my administration and management of the rental agreement, I would, naturally, administer and manage any other agreement incidental or related to the applicant's rental agreements. This includes any and all session agreements concluded by the applicant with any other party.
9. The cession agreement does not exist independently of the rental agreement.
10. My administrative and managerial role, not being limited solely to the rental agreement, therefore encompasses the enforcement of cession agreements, and having all the applicants files under my control and having access to those files, including the session agreements, I submit that the facts I have sworn to in the founding affidavit, as well as this affidavit, are indeed within my personal knowledge.”

- [12] I am in agreement with the Third Respondent's submission that there are no substantiating documents presented by the Applicant or attached to the Founding Affidavit explaining the relationship between the deponent and Sasfin Bank Limited. Further, there is nothing, except the say so by Govender, explaining why Mr Govender attends to the administration of the Applicant. It is true that Sasfin Bank Limited is not even a party to these proceedings.

Requirements for Joinder

- [13] Rule 10 of the Uniform Rules of Court provides that:

"(1) any number of persons, each of whom has a claim, whether jointly, jointly and severally, separately or in the alternative, may join as plaintiffs in one action against the same defendant or defendants against whom any one or more of such persons proposing to join as plaintiffs would, if he brought a separate action, be entitled to bring such action, provided that the right to relief of the persons proposing to join as plaintiffs depends upon the determination of substantially the same question of law or fact which, if separate actions were instituted, would arise on each action, and provided that there may be a joinder conditionally upon the claim of any other plaintiff failing.

- (2) A plaintiff may join several causes of action in the same action.
- (3) Several defendants may be sued in one action either jointly, jointly and severally, separately or in the alternative, whenever the question arising between them or any of them and the plaintiff or any of the plaintiffs depends upon the determination of substantially the same question of law or fact which, if such defendants were sued separately, would arise in each separate action."

- [14] The test for joinder is whether a party has a direct and substantial interest in the subject matter of the litigation which may prejudice the party that has not been joined. In *Gordon v Department of Health, Kwazulu-Natal*[3] it was held that if an order or judgment cannot be sustained without necessarily prejudicing the interest of third parties that had not been joined, then those third parties have a legal interest in the matter and must be joined." (see also *Amalgamated Engineering Union v Minister of Labour* 1949 (3) SA 637(A)

- [15] In *Judicial Service Commission and Another v Cape Bar Council and Another*,[4] the Court held as follows:

"It has by now become settled law that the joinder of a party is only required as a matter of necessity – as opposed to a matter of convenience – if that party has a direct and substantial interest which may be affected prejudicially by the judgment of the court in the proceedings concerned (see eg Bowrin NO v Vrededorp Properties CC 2007 (5) SA 239 (SCA) para 21). The mere fact that a party may have an interest in the outcome of the litigation does not warrant a non-joinder plea. The right of a party to validly raise the objection that other parties should have been joined to the proceedings, has thus been held to be a limited one (see eg Burger v Rand Water Board 2007(1) SA 30 (SCA) para 7; Andries Charl Cilliers, Cheryl Loots and Hendrick Christoffel Nel Herbstein & Van Winsen The Civil Practice of the High Courts of South Africa 5 ed vol 1 at 239 and the cases there cited)."

- [16] Counsel for the Third Respondent submitted that there is no nexus between the Applicant and the Third Respondent. She further submitted that the reason advanced by the Applicant on why the Third Respondent should be joined is based on a Cession Agreement between the Third Respondent (Outsource) and Sanlin Rental. The Applicant was not part of the Rental Agreement.
- [17] In my view, the Cession Agreement is enforceable against the parties who entered into that Cession Agreement. In these proceedings, the Applicant admits that it did not enter into a Cession Agreement with Outsource.
- [18] The Applicant has not advanced a case on why the order it seeks has anything to do with Outsource and whether, should the order be granted, it can be effected without prejudicing Outsource. Further, it is the Applicant's case that it seeks to join Outsource on the basis of a Cession Agreement, not on the basis of a Rental Agreement.
- [19] The Applicant's action is premised on the Master Rental Agreement which was ceded a few times, as illustrated above. Outsource is therefore no longer part of the Master Rental Agreement. All rights emanating from the Master Rental Agreement transferred to the cedent.
- [20] In my view, the Applicant has not succeeded in establishing facts to warrant a joinder of the Third Respondent out of necessity. The Third Respondent does not have a direct and substantial interest in any order the trial court may make.
- [21] The Constitutional Court in *Matjhabeng Local Municipality v Eskom Holdings Limited and Others*[5] held as follows:

"At common law, courts have an inherent power to order joinder of parties where it is necessary to do so even when there is no substantive

application for joinder."

The court, therefore, has discretion in terms of common law to order the joinder of any party to the pending proceedings.

Conclusion

- [22] Having considered the Applicant's case, it is my considered view that the Applicant has not satisfied the requirement for the joinder of the Third Respondent. In fact, the point in limine ought to have been dispositive of the matter. Consequently, the application stands to fail.
- [23] This brings me to the issue of costs. It is an established principle of our law that the successful party should be awarded costs, even though the issue of costs is within the discretion of the court. However, I cannot find any reason why costs should not follow the result.

[24] In the result, I make the following order:

The application is dismissed with costs, including costs of Counsel on scale B.

K F PHAHLAMOHLAKA

ACTING JUDGE OF THE HIGH COURT

Appearances

For the Plaintiff: Adv. R More

Instructed by: Wright Rose-Innes Incorporated.

Email:

ravim@wri.co.za

For the Respondent: Adv K Howard

Instructed by: Vermeulen Attorneys.

Email:

cathleen@vermeulenlaw.co.za

Judgment reserved on: 23 January 2025

Judgment delivered on: 15 May 2025

[1] Particulars of Claim, para 7.

[2] Replying Affidavit, para 5 to 11.

[3] *Gordon v Department of Health, Kwazulu-Natal* 2008 (6) SA 522; [2008] ZASCA 99 (SCA) para 9.

[4] *Judicial Service Commission and Another v Cape Bar Council and Another*

[2012] ZASCA 115; 2013 (1) SA 170 (SCA) para 12.

[5] *Matjhabeng Local Municipality v Eskom Holdings Limited and Others* 2018 (1) SA 1 (CC) para 91.

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Prepared on 14 October 2026 · Esheria