

SOUTH AFRICA / JUDGMENT

Transasia 1 (Pty) Ltd v Sherif of the High Court
and Others (Leave to Appeal) (10895/2024P)
[2024] ZAKZPHC 91 (22 October 2024)
[2024] ZAKZPHC 91

COURT

Kwazulu-Natal High Court, Pietermaritzburg

BEFORE

P C Bezuidenhout

CASE / FILE NUMBER

10895/2024P

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IN THE HIGH COURT OF
SOUTH AFRICA
KWAZULU-NATAL
DIVISION, PIETERMARITZBURG

CASE NUMBER: 10895/2024P

In the matter between: TRANSASIA 1 (PTY)
LTD
APPLICANT
AND
THE SHERIF OF THE HIGH
COURT, DUNDEE
FIRST RESPONDENT
CATERPILLAR FINANCIAL
SERVICES
SOUTH AFRICA (PTY)
LTD
SECOND RESPONDENT
MAHLANGUMGABADENI
TRADING ENTERPRISE CC THIRD
RESPONDENT
PHEZUKOMKHONO
COMMUNITY
PROPERTY ASSOCIATION
FOURTH RESPONDENT
JUDGMENT ON
APPLICATION FOR LEAVE TO APPEAL
P

C BEZUIDENHOUT J:

[1]

Applicant is seeking leave to appeal against my judgment dismissing its application with costs.

[2]

It was common causes that there was an order from the high court Mpumalanga for the Sheriff to take possession of a certain caterpillar where it may be found.

[3]

Entry to certain premises where the said caterpillar was found was refused where after the Sheriff with the assistance of a locksmith had locks opened etc. to gain entry.

[4]

It is submitted that I failed to consider the fundamental rights in section 36(1) of the Constitution by finding that there were limits to freedom when there was a court order that the Sheriff had to comply with.

[5]

That the Respondents did not make out a case that applicant's fundamental rights were limited.

First Respondent had no right in terms of the court order to enter and search Applicant's property and no right to detain the services of a locksmith to attach and remove the caterpillar. The premises were not that of a party to the proceedings.

[6]

The party who alleges there was a limitation had to raise it. There was no facts in this regard on the papers. The limitations could not be justified on the papers.

[7]

Another court, based on the absence of facts justifying the limitation, could find it was not justified. The wording of the order is what is normally used and because of the importance thereof leave should be granted to the Supreme Court of Appeal. The right to privacy and access to court were affected.

[8]

I was referred to the judgment of *Coetzee v Government of the Republic of South Africa* 1996 (4) SA 631 (CC) which dealt with the sections of the Magistrates Court Act to imprison a debtor. At paragraph 9 it held it had to be decided whether the legislation limits the rights in section 3 of the Constitution and if so if the limitation is justified in terms of section 33(1) of the Constitution. (Now section 36)

[9]

I was also referred to Phillips and Another v Director of Public Prosecutions Witwatersrand Local Division and Others [2003] ZACC 1; 2003 (3) SA 345 (CC).

[10] It

was submitted by Second Respondent that the starting point was that it was not unlawful as there was a court order. The sheriff acted in terms of this court order. If Constitutional issues were raised, notice had to be given in terms of Rule 16 which was not done. The order of Langa J ordered the Sheriff to take the caterpillar where it was found. If the Sheriff did not do so he could have been in contempt of court. This Court was correct in finding the Sheriff was obliged to execute the order. No one took the law into their own hands and therefore there was no unlawful conduct.

[11]

Although in its founding affidavit Applicant mentioned that Transasia's fundamental rights including but not limited to privacy and access to court were breached no factual basis therefore was set out. There is therefore no compelling reasons for granting leave to appeal in terms of sections 17(1)(a)(ii) of the Superior Court's Act.

[12] I

was referred to the decision of Ex Parte Kaefer Insulation (Pty) Ltd: In re Kaefer Insulation (Pty) Ltd v Shameck 1984 (3) SA 533 (W) where the court refused an order authorising forced entry holding that the Sheriff already had such powers by implication.

[13]

First Respondent submitted that there was a valid court order, that it was thus justified to act in terms thereof. There was no spoliation because the actions taken were justified in terms of the court order. The Sheriff accordingly acted in a reasonable manner in executing the court order.

[14] I

have considered the grounds of appeal, the submissions on behalf of Applicant, First and Second Respondent and the heads of argument submitted. The facts in the cases of Coetzee and Phillips are distinguishable as they deal with legislation and not a valid court order.

[15]

The test to be applied is whether there would be reasonable prospects on appeal is set out in *Caracto (Pty)*

Ltd v Independent Advisory

(Pty) 2020 (5) SA 35 (SCA) *Smith v S* 2012 (1) SACR 567 (SCA).

[16]

There must be a reasonable chance of succeeding. Put differently can a court of appeal reasonably arrive at a different

conclusion. *Ramakala & others v African National Congress and Another* (2021) ZSCA 31.

[17] I

have also considered the provisions of section 36 of the Constitution in terms of which rights in the Bill of rights may be limited.

The court order did not set out where the caterpillar may be taken from. It is not disputed

that it was found on the said

property. The wording of the order was accepted by all the parties was in the normal form.

I set out in detail in my

judgment the reasons I found allowed the Sheriff to enter the premises and remove the caterpillar.

[18] A

court order which is valid and which authorises the Sheriff to attach and remove something where found

must be complied with by the

Sheriff. If not court orders will be disobeyed. Further

having such an order the Sheriff

cannot be so required to bring an

application to the High court to enter certain premises where the article is. The order

is phrased widely to allow the Sheriff to

take the property where it may be. If not the effectiveness of court orders would

be severely compromised.

[19]

Although I did not specifically refer to section 36 of the Constitution in my judgment the reasons for my conclusion that there

was a limitation appears from the judgment.

[20] I

am also not convinced that a constitutional issue arises because the order was not granted against Applicant.

The order is clear

that it be taken from where it may be found. Considering the facts of the present case how the caterpillar

had been moved etc. it

is indicative that it is not possible to always know where it may be.

[21] I

am accordingly of the view that there is no reasonable prospect that

another court could come to a different conclusion.

[22]

The application for leave to appeal is dismissed with costs.
P C BEZUIDENHOUT J.

JUDGMENT

RESERVED: 17 OCTOBER 2024

JUDGMENT

HANDED DOWN: 22 OCTOBER 2024 COUNSEL FOR APPLICANT: MR. B C STOOP SC Instructed by: TTS Attorneys Inc Johannesburg Ref: Mr T Sibuyi Tel: 078 213 4745 Email: t.sibuyi@attsattorneys.co.za c/o: Viv Greene Attorneys Pietermaritzburg COUNSEL FOR FIRST RESPONDENT: MR. R MANIKLALL Instructed by: Ravindra Maniklall & Company Inc Umhlanga Ridge Ref: Mr Maniklall Tel: 032 5337488 Email: rmcattorneys@gmail.com COUNSEL FOR SECOND RESPONDENT: MR P G LOUW Instructed by: Werksmans Attorneys Sandton Ref: Ms E De Doncker/Ms Z Oosthuizen/ CATE41156.120 Tel: 011 535 8176 Email: zoosthuizen@werksmans.com c/o: Garlicke & Bousfield Inc Durban c/o: Botha and Olivier Attorneys Pietermaritzburg Tel: 033 342 7190 Email: LEGAL@BANDO.CO.ZA

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