

SOUTH AFRICA / JUDGMENT

Snap-On Africa (Pty) Ltd and Others v Joubert and Others (41993/2012A) [2015] ZAGPPHC 819 (7 December 2015) [2015] ZAGPPHC 819

COURT

North Gauteng High Court, Pretoria

BEFORE

P.M. Mabuse

CASE / FILE NUMBER

41993/2012A

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IN THE HIGH COURT OF SOUTH AFRICA

GAUTENG DIVISION, PRETORIA

CASE NUMBER: 41993/2012

DATE: 7 December 2015

SNAP-ON AFRICA (PTY) LTD First Applicant

SNAP-ON INC. Second

Applicant

SNAP-ON EQUIPMENT INC. Third

Applicant

SNAP-ON EQUIPMENT EUROPE LTD Fourth Applicant

V

SEAN JOUBERT First Respondent

S O EQUIPMENT GAUTENG NORTH (PTY) LTD Second Respondent

EQUIPMENT AFRICA Third Respondent

INTEGRATED MARKETING (PTY) LTD Fourth Respondent

JUDGMENT: RESPONDENTS' APPLICATION TO STRIKE OUT

IN TERMS OF RULE 6(15)

MABUSE J:

- [1] I now turn to the respondents' application to strike out in terms of Rule 6(15). For purposes of convenience I will refer to the parties by the names they chose to call themselves in the main application. The respondents apply that certain paragraphs, annexures and affidavits referred to in the applicants' replying affidavit be struck out on certain grounds.
- [2] The respondents have attached a document marked annexure 'A' to their application. This annexure 'A' contains a list of the paragraphs or annexures or affidavits which the respondents seek an order that they be struck out. It also contains a separate column in which the grounds to strike out the relevant paragraphs or annexures or affidavit have been set out.
- [3] The respondents seek to have paragraph 38, including 38.1 to 38.7 of the replying affidavit and annexure 'JAW2'; paragraph 40 of the replying affidavit; paragraph 41 including subparagraphs 41.1 and 41.2 of the replying affidavit; annexures 'JAW3' and the affidavit of Mr. Pramdev, all on the grounds that they are new matter struck out. It is also sought to have paragraph 41 including subparagraphs 41.1 and 41.2 on two other grounds struck out. It is contended by the respondents that the contents of the said paragraph 41 are hearsay and furthermore constitute inadmissible evidence.
- [4] This application is brought in terms of Rule 6(15) of the Uniform Rules of Court. This Rule provides as follows:

"The Court may on application order to be struck out from any affidavit any matter which is scandalous, vexatious, or irrelevant with an appropriate order as to costs, including costs as between attorney and client. The Court shall not grant the application unless it is satisfied that the applicant will be prejudiced in his case if it be not granted."

The last sentence of the said Rule makes it clear, in my view, that it is not enough to state the grounds upon which to strike out any matter. The applicant must also show the Court that if not struck out the impugned matter will prejudice him or her or it in the further conduct of his or her or its litigation. This seems to be the approach of the Courts. In *Steyn v Schabort en Andere NNO* 1979(1) SA 694 (O) at page 697 the Court had this to say:

"Dit moet egter in gedagte gehou word dat Hofreël 6(15) op aansoeke om te skrap ingestel is. Dit volg nie dat dit so vertolk of toegepas moet word dat dit 'n applikant wat aansoek doen om, byvoorbeeld, 'n relevant of hoorsê bewerings en stukke wat hom nie in sy saak benadeel te hulp te kom nie, al word die koste ook daardeur selfs ernstig opgejaag. Onnodige koste aangegaan om deurhalingsprosedure verkeerdelik toe te pas sal nie geduld word nie."

In the same authority the Court relying on the case of *Anderson and Another v Port Elizabeth Municipality* 1954(2) SA 299 OK where at

p. 309, stated as follows:

“Suffice as to say this procedure was never intended to be utilized to make technical objections of no advantage to anyone and just increasing costs.”

- [5] In the affidavit in support of the application to struck out the respondents, while they have properly identified what they sought to be struck out and have set out the grounds thereof, have failed to indicate how those portions of the replying affidavit and annexures and affidavits will prejudice them in the further conduct of their litigation. It is clear that the order to strike out will only be granted if the respondents show prejudice that they would suffer in the further litigation of the matter if the said portions of the replying affidavit are not struck out. The respondents have therefore failed to comply with the Rule under which they brought this application and accordingly the application cannot succeed.
- [6] I therefore make the following order:
1. The application to strike out is hereby dismissed with costs.

P.M. MABUSE

JUDGE OF THE HIGH COURT

Appearances:

Counsel for the applicants: Adv. GE Morley (SC)

Adv. PJ Wallis

Instructed by: Morris Fuller Walden Williams

c/o Adams & Adams Attorneys

Counsel for the 1st, 2nd & 3rd respondents: Adv. R Michau (SC)

Adv. LG Kilmartin

Adv. H Worthington

Instructed by: Van der Wal Slade Ramabulana Inc.

Date Heard: 17-19 February 2015

Date of Judgment: 7 December 2015

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