

SOUTH AFRICA / JUDGMENT

van Eck and Another v Standard Bank of South Africa Limited and Others [2023] ZAGPPHC 150; 46944/2018 (23 February 2023) [2023] ZAGPPHC 150

COURT

North Gauteng High Court, Pretoria

BEFORE

Phahlane

CASE / FILE NUMBER

46944/2018

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REPUBLIC OF SOUTH AFRICA

IN THE HIGH COURT OF SOUTH AFRICA

GAUTENG DIVISION, PRETORIA

CASE NO: 46944/2018

REPORTABLE: NO

OF INTEREST TO OTHER JUDGES: NO

REVISED: YES/NO

23-02-2023

In the matter between:

DAVID BENJAMIN VAN ECK

1st Intervening Applicant

(Identity Number: [...])

MARIA WILHEMINA MAGDALENA VAN ECK

2nd Intervening Applicant

and

THE STANDARD BANK OF SOUTH AFRICA LIMITED 1st Respondent

(1962/000738/06)

MARIA ELIZABETH FOURIE N.O.

2nd Respondent

DAVID BENJAMIN VAN ECK N.O.

3rd Respondent

MARIA WILHELMINA MAGDALENA VAN ECK N.O.

4th Respondent

In re:

THE STANDARD BANK OF SOUTH AFRICA LIMITED

Plaintiff

MARIA ELIZABETH FOURIE N.O.

First Defendant

DAVID BENJAMIN VAN ECK N.O.

Second Defendant

MARIA WILHELMINA MAGDALENA VAN ECK N.O.

Third Defendant

REASONS

FOR JUDGMENT

The reasons for judgement were issued by the Judge whose name is reflected herein and submitted electronically to the parties/their legal representatives by email. The reasons for judgement are further uploaded to the electronic file of this matter on CaseLines by her secretary on the date deemed to be 23 February 2023.

PHAHLANE, J

[1] On 18 July 2022, this matter came before court on an opposed basis wherein the applicants sought the order in the following terms:

“1. That the First and Second Applicants be granted leave to intervene, in their personal capacities, as the Fourth and Fifth Defendants, in the action instituted by the First Respondent, under case number 46944/2018.

2. That the First and Second Applicants file their plea and counterclaim, (the latter, if any), within 20 (TWENTY) Court days following the date of this Court order, where after the Uniform Rules of Court and Practice Directives will apply.

3. Cost be paid by any one of the Respondent(s), opposing the application, on a scale as between attorney and own client”.

[2] The factual background to this case is common cause and will not be repeated herein. It is common cause that the first respondent, Standard Bank of South Africa ("Standard Bank") instituted an action against the first and second applicants in their capacities as trustees of the Randland Trust ("The Trust"), as a result of the Trust defaulting in its obligation to repay and service the loan advanced to it by Standard Bank. It is also common cause that the Trust in question relates to the immovable property, a farm known as portion [...] of the Farm Vissershoeck.

[3] The applicants contend that they should be granted leave to intervene on the basis that it is their wish to protect their personal

interests with the desire to launch an enrichment action. It should be noted from the onset that much of the arguments advanced on behalf of the applicants related to the aspects not referred to or dealt with in their founding or replying affidavits, and neither were they referred to in their heads of argument. Be that as it may, it is apparent from the reading of the founding affidavit that the applicants seek to protect their pecuniary interest because they made certain improvements to the immovable property and have stated as follows:

“11.5As we continue to farm on the land we have added and continue to add value to the Farm.

12. We were consequently advised that we can only protect our personal interests in and on the Farm for the labour and added value that we have added to the Farm, if we apply for intervention in our personal capacities in the action as per this application”.

[4] This is confirmed in the applicants’ heads of argument in which it is stated that apart from the applicants’ interest in the farm which forms the subject of litigation between Standard Bank and the trustees of the Trust, ‘the applicants’ interest is that of a claim sounding in money for the improvements and additions the applicants have effected to the farm’.

[5] It is on this basis that Ms. Kollapen appearing for Standard Bank submitted that the applicants in their personal capacities, have not demonstrated that they have a direct and substantial interest, and that their interest is that of an enrichment claim which entitles them to launch an action for enrichment as evidenced by a counterclaim made, as it appears in the pre-trial minutes dated 5 February 2020.[1] It was further submitted that there is no bona fide dispute before court which translates into a right that requires protection vis-à-vis the bond agreement.

- [6] It is trite that in an application for intervention, the question is whether on the applicant's version, he or she is entitled to join in the proceedings as intended by Rule 12 of the Uniform Rules of court. The primary test for a joinder is well established. The Constitutional Court in *SA Riding for the Disabled Association v Regional Land Claims Commissioner & Others*[2] has articulated the test as follows:

"It is now settled that an applicant for intervention must meet the direct and substantial interest test in order to succeed."

What constitutes a direct and substantial interest is the legal interest in the subject-matter of the case which could be

prejudicially affected by the order of the court. This means that the applicant must show that it has a right adversely

affected or likely to be affected by the order sought. But the applicant does not have to satisfy the court at the stage of intervention that it will succeed. It is sufficient for such applicant to make allegations which, if proved, would entitle it to relief".

- [7] It is worth noting that in their founding affidavit as well as the replying affidavit, the applicants do not dispute that funds were advanced to the Trust. They in fact concede having received ad hoc payments from the erstwhile trustee, Mr. Fourie[3] who has since passed away.
- [8] Standard Bank argues that monies advanced in favour of the Trust were not repaid and as such, the bank is within its rights to demand payment and to call up its security which is the immovable property vested within the Trust. Along with this argument, is the contention that the applicants have not placed any information before court in their personal capacity to show that their interests are worthy of protection and/or that they will suffer a level of prejudice by the bank when it enforces its rights.
- [9] I am inclined to agree with this argument because the applicants failed to explain how their rights will be adversely affected or are likely to be affected by the order sought in the main action. In any event, the applicants are already defendants cited in their capacities as trustees in the main action, and there is remedy available to them where they can institute an action for enrichment in respect of their claim flowing from the improvements made to the farm.
- [10] In determining the issue whether there is information which the applicants would provide the court in the pending action which will materially affect the outcome of the matter, the answer to this question should be answered in the negative because the applicant have in their founding papers, denied knowledge of the bond agreement, as well as the monies advanced and owed to Standard Bank. In my view, had there been additional information which the applicants believed was vital, such would have been dealt with through other processes provided for in terms of the rules, such as allowing the applicants to file further documents.

[11] Save to mention the history of how the farm got to be placed into a Trust and the dealings of Mr. Fourie as the trustee of Randland Trust, there is no information placed before court which in my view, would persuade this court to grant the relief sought by the applicants.

Having said that, I am alive to the fact that as far back as 2018, the applicants purportedly had a desire to intervene as parties in their personal capacity but did nothing.

[12] It is on this basis that Ms. Kollapen submitted, and correctly so, that the behavior of the applicants is indicative of the attitude aimed to unduly delay the proceedings and that the applicants have not demonstrated their interests which requires protection by the court.

[13] In light of the circumstances of this case and in applying the above principle, I am of the view that the test for intervention has not been met, as the applicants have failed to satisfy the court that leave to intervene in their personal capacities as the fourth and fifth defendants in the action instituted by the first respondent, should be granted in their favour. Consequently, the application falls to be dismissed.

[14] In the circumstances, the following order was made:

1. The application by the first and second applicants for leave to intervene in their personal capacities as the fourth and fifth defendants in the action instituted by the first respondent under case number 46944/2018 is dismissed with costs.

PD. PHAHLANE

JUDGE OF THE HIGH COURT

For the Applicant

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For the First Respondent

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: HAASBROEK & BOEZAART INC.

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Reasons

handed down on

: 23 February 2023

- [1] Para 4.3: - The second and third defendants recorded that, in the event of the parties not being able to settle the matter, Mr. and Mrs. van Eck, in their personal capacities, and not in their capacities as the second and third defendants reserve their right to bring an application for joinder and/or to institute a claim for enrichment.
- [2] 2017 (5) SA 1 (CC).
- [3] Founding Affidavit, Para 9.10.14
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ORIGINAL SOURCE <https://www.saflii.org/za/cases/ZAGPPHC/2023/150.html>

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