

SOUTH AFRICA / JUDGMENT

Viljoen NO and Others v GWK Limited (2304/2017) [2017] ZAECHGC 135 (28 November 2017) [2017] ZAECHGC 135

COURT

Eastern Cape High Court, Grahamstown

BEFORE

NG Beshe

CASE / FILE NUMBER

2304/2017

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IN

THE HIGH COURT OF SOUTH AFRICA

(EASTERN

CAPE DIVISION, GRAHAMSTOWN)

CASE

NO.: 2304/2017

In

the matter between:

SYLVIA

ANNELIA VILJOEN

N.O. First

Applicant/ Defendant

CLARANCE

STANDER N.O. Second

Applicant/ Defendant

JACOBUS

FREDERICK VILJOEN N.O. Third

Applicant/Defendant

JACOBUS

FREDERICK VILJOEN Fourth

Applicant/Defendant

SYLVIA

ANNELIA

VILJOEN Fifth

Applicant/Defendant

And

GWK

LIMITED Respondent/Plaintiff

JUDGMENT**– APPLICATION FOR LEAVE TO APPEAL****BESHE J:**

[1] Four of the five defendants against whom I granted summary judgment on the 13 July 2017 in favour of plaintiff, filed a notice of application for leave to appeal my judgment as aforementioned. However, on the day of the application, counsel for the applicants

intimated that only first to third applicants were seeking leave to appeal (first to third defendant in the summary judgment application).

[2] As would be apparent from my judgment, in a bid to resist the summary judgment application the applicants filed a “Notice of objection to summary judgment”. In the said notice recorded that the application was opposed on the (i) merits, (ii) on a point in limine. The point taken by the applicants was that respondent’s affidavit in support of summary judgment was fatally defective in

that it did not comply with Rule 32 (2). That defect according to the applicants was that in their opinion the applicants do not have a bona fide defence, it is stated “I verbally believe that the respondents/defendants have no bona fide defence”. No opposing affidavits were filed by or on behalf of the applicants as required in terms of Rule 32 (3) (b) of the Rules.

[3] For the reasons stated in my judgment (summary judgment) I dismissed the point in limine that was raised by the applicants.

[4] In their notice of objection to summary judgment, applicants gave notice that in the event that their point in limine is dismissed, leave to file an opposing affidavit on the merits will be sought. It is trite that the late filing of the opposing affidavit can be condoned. Defendant must however aver that he has a bona fide defence on the merits and the plaintiff must be given an opportunity to deal with such defence raised in plaintiff’s affidavit in opposing the application for condonation.

[5] No such application was placed before me. No such defence was disclosed to me (in respect of the summary judgment application

either). That being the case, I had no option but to grant the summary judgment.

[6] It was only in the notice of application for leave to appeal and during argument in respect of this application (Leave to Appeal) that applicants sought to raise issues pertaining to the claims against them. Surely these are issues that should have been raised in respect of the summary judgment application in an affidavit or oral evidence not for the first time during an application for leave to appeal.

[7] Section 17 (1) (a) of the Superior Courts Act 10 of 2013 provides that leave to appeal may only be given where judge/s concerned are of the opinion that the appeal would have a reasonable prospect of success. I am not persuaded that in the case – namely that the appeal by the applicants would have a reasonable

prospect of success.

[8] Accordingly the application for leave to appeal the order and judgment granting summary judgment against the applicants is dismissed with costs.

NG BESHE

JUDGE OF THE HIGH COURT

APPEARANCES

For the Plaintiff: Mr S Beukes

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Ref.: S Beukes/LF/VILJ

For the Defendants: Adv: KW Lüderitz SC

Instructed by: WERKMANS ATTORNEYS

C/o WHEELDON RUSHMERE & COLE INC.

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Ref.: M Van Der Veen/Michelle/S20177

Date Heard: 11 October 2017

Date Reserved: 11 October 2017

Date Delivered: 28 November 2017

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Prepared on 12 October 2026 · Esheria