

SOUTH AFRICA / JUDGMENT

Wolfaardt v Venter and Others (2019/11134) [2022] ZAGPJHC 102 (28 February 2022)

[2022] ZAGPJHC 102

COURT

South Gauteng High Court, Johannesburg

BEFORE

M Bezuidenhout

CASE / FILE NUMBER

2019/11134

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REPUBLIC

OF SOUTH AFRICA

IN

THE HIGH COURT OF SOUTH AFRICA

(GAUTENG

DIVISION, JOHANNESBURG)

Case

no: 2019/11134

REPORTABLE:

YES / NO

OF

INTEREST TO OTHER JUDGES: YES/NO

REVISED.

28

February 2022

In

the matter between:

WOLFAARDTT:

JOHANNES FREDERICK

Applicant

And

VENTER: MARIUS
1st
Respondent
SANDRIVER
SAFARIS (PTY) LTD
2nd
Respondent
SANDRIVER
RESORT (PTY) LTD
3rd
Respondent
SANDRIVER
LODGE (PTY)
LTD
4th
Respondent

Delivered: This judgement was prepared and authored by the Judge whose name is reflected herein and is handed down electronically by circulation to the Parties/their legal representatives by email and by uploading it to the electronic file of this matter on CaseLines. The date for hand-down is deemed to be 28 February 2022.

JUDGMENT

BEZUIDENHOUT AJ:

- [1] In this matter the applicant applied for a declaratory order in terms of section 21(1)(c) of the Superior Courts Act 10, of 2013, declaring two contracts concluded between the 1st respondent and him invalid. The 1st respondent opposed the relief sought and brought a counter application to have the last contract concluded between the parties, rectified so that it accords with what the 1st respondent claimed to be, the true intention of the parties.

BACKGROUND

- [2] The applicant and 1st respondent are both businessmen. The applicant is the owner of amongst others, the farm called Dorothy, located in Musina, Limpopo

Province. The applicant conducted a game hunting business from the farm Dorothy and operated a lodge therefrom, which catered for the hunters and other guests. The business traded under the name of Sandrivier Safaris[1].

- [3] According to the 1st respondent during the period 2009 to 2011, he assisted the applicant with flight bookings and visa applications for the international hunters and guests that visited Sandrivier Safaris. He furthermore assisted the applicant with any form of computerised functions and electronic communication the applicant had to attend to while

conducting his business. He did this at the applicant's request. He was not remunerated for the services rendered to the applicant over the aforementioned period but was instead invited to hunt with the applicant.

- [4] According to the 1st respondent the applicant at same stage sought his assistance with the administrative, financial management and other managerial tasks involved in running his various business operations and promised the applicant a 5% share in the farm Dorothy. On the 1st respondent's version, the applicant asked him to open and establish three companies into which the 1st respondent wanted to transfer his immovable properties, which the 1st respondent did (the three companies that was created for this purpose was the 2nd to 4th respondents). The 2nd respondent was registered in 2012, it is unknown when the 3rd and 4th respondents were registered.
- [5] The 1st respondent was also, on his version, assisting the applicant financially without any form of security, save for the promise of a 5% share in the farm Dorothy. According to the 1st respondent the applicant at some stage agreed to provide the 1st respondent with a 5% share in the farm Dorothy and the only manner this could be achieved was to transfer the farm Dorothy into

Sandrivier Safaris (Pty) Ltd and to transfer 5% of the shares in Sandrivier Safaris (Pty) to the applicant.

- [6] On the 1st respondent's version, he and the applicant concluded an oral agreement in 2013 in terms of which the 1st respondent would receive 5% shares in Sandrivier Safaris (Pty) Ltd (the 2nd respondent) with an option to purchase another 5% on the premise that the farm Dorothy will be transferred to Sandrivier Safaris (Pty) Ltd (the 2nd respondent). The 1st respondent was appointed as a director to the 2nd respondent on 23 April 2014.
- [7] According to the 1st respondent's version, the oral agreement was replaced by a written agreement which was concluded on 22 January 2015. A copy of this agreement is attached to the applicant's founding affidavit as annexure A, and I will refer to this agreement as annexure A.
- [8] The 1st respondent became more involved in the applicant's personal as well as business affairs and advanced further loans to the applicant and as such he became dissatisfied with his shareholding. Towards the end of 2015 the applicant, to compensate the 1st respondent, then offered the 1st respondent a 30% shareholding in Sandrivier Safaris (Pty) Ltd (the 2nd respondent).
- [9] The 1st respondent stated that in or about February 2016, the parties concluded a further written agreement of which a copy is attached to the applicant's founding affidavit as annexure B. I will likewise refer to this agreement as annexure B. Neither party

dispute the conclusion of annexure A or B or that the 1st respondent drafted the two agreements.

ANNEXURE A AND B

- [10] Annexure A is titled: Contractual Agreement Between Johannes Frederick Wolfaardt And Marius Venter. It is a three-page document of which the third page contain only the signatures of the parties. The agreement stipulates that the applicant is the owner of the farm Dorothy (a detailed description of the farm Dorothy was provided) and that the 1st respondent purchased 10% of the farm Dorothy.
- [11] The first 5% of the purchase price would be paid in the form of duties rendered by the 1st respondent; the duties were listed. The next 5% would be sold at a price of R 1 500 000-00 which amount could be paid by cash, E.F.T. or duties and services rendered by the 1st respondent outside those duties rendered to settle the first 5%. Annexure A, paragraph 3, made provision for the applicant to sign all the documents needed to transfer the farm Dorothy from the applicant's name[2] when the 1st respondent made such demand.
- [12] In paragraph 4 of annexure A, it was recorded that the farmhouse opposite the N1 consisting of approximately 260 hectares, was excluded from the agreement. The last 3 unnumbered paragraphs of annexure A contained standard 'entire agreement', non 'variation and cancellation' and 'indulgences' clauses.
- [13] Annexure B is titled: Amended Contractual Agreement Between Johannes Frederick Wolfaardt And Marius Venter. It is a five-page document and the fifth page consist of the parties' signatures.
- [14] In Annexure B the parties used the acronym JFWB to refer to the applicant's business and listed JFWB to consist of:
1. MS Dorothy Farm no 254, portion 0 extent 3438,8487 H Township: Northern DC;
 2. Johannes Frederick Wolfaardt t/a Sandrivier Safaris;
 3. Hentiq 2676 (Pty) Ltd;
 4. Erf [....] and [....], Portion 0, Messina Ext 1;
 5. Erf [....], Portion 1, Messina Ext 1;
 6. Erf [....], Portion 0, Messina; and
 7. Additional business interest, mining and / or concession rights and trading options.
- [15] The 1st respondent expertise, access to expertise and infrastructure were listed as well as the entities he was either a shareholder, director, owner, registered associate or member of.
- [16] It was recorded thereafter that the applicant wanted to access the 1st respondent's expertise, access to expertise, infrastructure and businesses but did not have the cashflow to do so, and whereas the 1st respondent wanted to obtain a share in JFWB, the parties agreed that the applicant sold 30% of his share in JFWB to the 1st respondent.

- [17] Clause 7 c) dealt with the purchase price and stipulated that the purchase price for the 30% shares were to be paid as follows: 20% shares in JFWB were deemed to have already been settled via the services the 1st respondent had rendered to the applicant and the loans the 1st respondent extended to the applicant during the period 2011 to 2015. The remaining 10% of the shares were sold to the 1st respondent or his nominee at a price of R 2 200 000-00. The amount as stipulated could be paid via additional assistance in some legal, administrative and managerial functions as of January 2016 as Director; assisting in the management and set up of the applicant's last will and testament and a trust in favour of the applicant's three children; or in cash or alternatively funds transfer if the 1st respondent so wish. An invoice must be issued for work done or services rendered by the 1st respondent to the applicant and be deducted from the purchase price.
- [18] In clause 7 c) ii, it was stipulated that the shares would be transferred to, on date of the agreement and a loan generated in favour of the applicant.
- [19] Annexure B further recorded that three companies have been opened where JFWB would be transferred into. It was thereafter recorded that JFWB were transferred into the three companies on the original date of sale in 2012[3]. It was furthermore recorded that the applicant and 1st respondent agreed that the initial contract and agreement was reached in 2012 and that annexure B was an extension of the original

contract. The parties recorded further that although the three companies were opened, the immovable properties have not been moved

as a result of the outstanding financials but as soon as these financials were completed, the immovable properties would be transferred. It was recorded that the applicant agreed to sign all documents necessary to transfer the immovable properties from his personal name as and when so requested by the 1st respondent.

- [20] The standard 'entire agreement', non 'variation and cancellation' and 'indulgences' clauses were also included in annexure B. There was also an agreement to refer any disputes emanating from the agreement to arbitration.

URGENT APPLICATION

- [21] A dispute arose between the applicant and the 1st respondent in connection with the interpretation and application of annexure A and B and in or about November 2018, the 1st respondent approached the High Court, Limpopo Division, Polokwane on an urgent basis. The 1st and 2nd respondents applied for an interim interdict to be issued pending the referral of the dispute to arbitration. The interim relief the 1st and 2nd respondents sought was to interdict and restrain the applicant from alienating, disposing and / or encumbering the farm Dorothy, from alienating and / or disposing of the game on the farm Dorothy, accepting or demanding any monies from Sandrivier (Pty) Ltd.'s clients or to demand that its clients make payment to the applicant, and from demanding payment from Pakama Crushers (Pty) Ltd.

[22] On 20 November 2018, judgment was handed down in the urgent applicant and Muller J dismissed the application with costs.

DISPUTE

[23] The applicant approached this Court for a declarator on the basis that the validity of annexure A and B were already finally decided upon by Muller J in the abovementioned judgment and that this Court should confirm this position and issue a declarator on the basis that both annexure A and B are null and void alternatively to the extent that annexure A and B was not declared invalid through the judgment, this Court should do so.

[24] The 1st respondent is of the view that Muller J was not requested to make a final determination of the validity of annexure A and B as the relief the 1st respondent claimed in that Court was on an urgent basis and the relief he and the 2nd respondent sought was that an interim interdict be issued pending the determination of the main dispute at arbitration[4].

[25] According to the 1st respondent the urgent court is not designed for the resolution of complex factual and legal disputes and that the test Muller J had to apply to the pleaded facts was whether the 1st respondent made out a case for interim relief and not final relief. In this regard the test to be applied was whether the 1st respondent established a *prima facie* right, even open to some doubt and not a clear right. Furthermore the 1st respondent had not filed a replying affidavit and Muller J did not have the benefit of the 1st respondents reply to the applicant's answering affidavit.

[26] The 1st respondent referred me to the matter of *Ward v Cape Peninsula Ice-Skating Club* 1998 (2) SA 486 and the passage quoted from *American Cyanamid Co. v Ethicon*. I was also referred to the matter of *Fourie v Olivier* 1971 (3) SA 274 (T) and *National Gambling Board v Premier KwaZulu Natal and others* [2001] ZACC 8; 2002 (2) SA 715. All the judgments emphasise the point that the adjudication of an interim interdict does not entail the final determination of rights as such determination is left to the trial court.

[27] As was pointed out by Grosskopf JA in *Knox D'Arcy Ltd & Others v Jamieson & Others*

[1996] ZASCA 58; 1996 (4) SA 348 (A) at 359F–360B, *albeit obiter*: 'As far back as *Prentice v Smith* (1889) 3 SAR 28 the Court held (at 29) that an order granting an interim interdict "is an interlocutory order, and that consequently there can be no appeal". On the whole this view was followed in the Provincial Divisions (see *Loggenberg v Beare* 1930 TPD 714; *Davis v Preiss & Co* (supra) [1944 CPD 108]; and the authorities referred to in those cases) and, ultimately, prevailed in the Appellate Division (*African Wanderers Football Club (Pty) Ltd v Wanderers Football Club* 1977 (2) SA 38 (A) at 46H-47A and *Cronshaw's case* supra).

DISCUSSION

- [28] Muller J found that both annexure A and B envisaged the sale of immovable property and this included the farm Dorothy and several Erven within the township of Messina. Both annexures A and B were subject to the Subdivision of Agricultural Land Act 70 of 1970 and the Alienation of Land Act 68 of 1981. Muller J found that no evidence was presented that permission was requested from the Minister of Agriculture for the subdivision of the farm Dorothy under section 3 (e) (i) read with the definition of sale in the Agricultural Land Act and this has been held to be visited with invalidity. He referred in this regard to the matter of *Hamilton Browning v Denis Barker Trust and another* 2001 (4) SA 1131 (N).
- [29] Muller J then recorded that noncompliance with the Subdivision of Agricultural Land Act was not the only reason to visit the two annexures with invalidity. According to him both agreements were silent on the purchase price and referred to the general rule, as formulated in *Westhinghouse Brake and Equipment (Pty) Ltd v Bilger Engineering (Pty) Ltd* 1986 (2) SA 555 (AD) that parties must agree on a purchase price sounding in money. He analysed both the annexures and the portions pertaining to the purchase price and the payment thereof and found that no time period within which payment had to be made had been specified either nor is it ascertainable neither is there any indication of the rate at which the 1st respondent's services were to be computed or the time period within which it had to be rendered. This also render annexure A and B to be void for vagueness.
- [30] Muller J then concluded the applicants had failed to establish a prima facie right. He found further that in light of his finding that the two annexures were void, he was not persuaded that the 1st and 2nd respondents suffered irreparable damages and the balance of convenience did not favour the grant of the relief. Accordingly, he dismissed the application with costs.
- [31] In *Firestone South Africa (Pty) Ltd v Genticuro AG* 1977 (4) SA 298 (A) the Appellate Division defined the proper approach to interpretation of judgments and order as follows: "The basic principles

applicable to construing documents also apply to the construction of a court's judgment or order. The court's intention is to be ascertained primarily from the language of the judgment or order as construed according to the usual, well-known rules . . . Thus, as in the case of a document, the judgment or order and the court's reasons for giving it must be read as a whole in order to ascertain its intention. If, on such a reading, the meaning of the judgment or order is clear and unambiguous, no extrinsic fact or evidence is admissible to contradict, vary, qualify, or supplement it. Indeed, it was common cause that in such a case not even the court that gave the judgment or order can be asked to state what its subjective intention was in giving it . . . Of course, different considerations apply when, not the construction, but the correction of a judgment or order is sought by way of an appeal against it or otherwise . . . But if any uncertainty in meaning does emerge, the extrinsic circumstances surrounding or leading up to the court's granting of the judgment or order may be investigated and regarded in order to clarify it; for example, if the meaning of a judgment or order granted on appeal is uncertain, the judgment or order of the court a quo and its reasons therefor, can be used to elucidate it. If, despite that, the

uncertainty still persists, other relevant extrinsic facts or evidence are admissible to resolve it.”

- [32] In *Bothma-Batho Transport (Edms) Bpk v S Bothma and Seun Transport (Edms) Bpk* 2014 (2) SA 494 (SCA) Wallis JA, writing for the court, expressed himself as follows: “Whilst the starting point remains the words of the document, which are the only relevant medium through which the parties have expressed their contractual intentions, the process of interpretation does not stop at a perceived literal meaning of those words, but considers them in the light of all relevant and admissible context, including the circumstances in which the document came into being. The former distinction between permissible background and surrounding circumstances, never very clear, has fallen away. Interpretation is no longer a process that occurs in stages but is ‘essentially one unitary exercise’ . . .”
- [33] In *Independent Institute of Education (Pty) Limited v KwaZulu-Natal Law Society and others* 2020 (2) SA 325 CC the Constitutional Court recently expressed itself as follows: “While maintaining that words should generally be given their ordinary grammatical meaning, this court has long recognised that a contextual and purposive approach must be applied to statutory interpretation. Courts must have due regard to the context in which the words appear, even where ‘the words to be construed are clear and unambiguous’.
- [34] Having regard to the fact that the 1st respondent sought an interim interdict, pending the resolution of the dispute about the validity of annexures A and B at arbitration, in urgent Court, where the 1st respondent did not have an opportunity to file a replying affidavit, and having regard to the reasons for the judgment, I am in agreement with the 1st respondent that the issue of the validity of annexures A and B were not finally determined by Muller J. To put it differently: Muller J did not anticipate the arbitration proceedings by deciding the issue of the validity of annexures A and B finally; this is the issue which the 1st respondent had indicated would be dealt with at arbitration. He dealt with the interim application and expressed his *prima facie* view on the validity of the agreements which is not binding on any subsequent Court dealing with the question of the validity of annexures A and B.
- [35] I have considered the applicants alternative claim that I determine the validity of annexures A and B. The respondents opposed the relief sought and filed a counterclaim for rectification. There are material disputes of fact, which cannot be decided on the papers before me. I therefore refer the matter to trail.
- [36] The matter of costs is reserved for determination by the trail court.

WHEREFORE THE COURT ORDERS THAT:

1. The matter is referred to trail;
2. The applicant’s notice of motion shall stand as a simple summons;
3. The respondents notice of intention to oppose shall stand as a notice of intention to defend;

4. The applicant is to file its declaration within 30 days of this order and thereafter the normal time periods for filing will apply as per the Rules of Court.
5. Costs reserved.

J M BEZUIDENHOUT AJ

Acting Judge of the High Court

DATE OF HEARING

: 19 October 2021

DATE OF JUDGMENT

: 28 February 2022

APPEARANCE APPLICANT

: Adv JH Sullivan

ATTORNEY FOR THE APPLICANT

: Waldick Janse van Rensburg

APPEARANCE RESPONDENTS

: Adv JA Venter

ATTORNEY FOR THE RESPONDENTS : Rudman & Associates Inc

- [1] This is not the same entity as the 2nd respondent, which was created at a later stage.
- [2] The recipient's name is not mentioned in the agreement.
- [3] The original date of sale was according to the 1st respondent the date on which the applicant and him concluded the first agreement. In par 4.17 of the answering affidavit the 1st respondent alleged that the applicant promised him a 5% share in the farm. In par 4.18 the 1st respondent pleaded that thereafter the applicant agreed to provide him with a 5% share in the immovable property. In par 4.20 the 1st respondent pleaded that in 2013 the applicant and him concluded an oral agreement in terms of which he would receive 5% shares in Sandriver Safaris (Pty) Ltd with the option of purchasing a further 5% share. In par 4.20 the 1st respondent pleaded that in terms of the applicants will which was executed in 2015 he would inherit a 10% share in Sandrivier Safaris (Pty) Ltd. In par 4.25 the 1st respondent then pleaded that the testamentary disposition has been excised from the will as the applicant and 1st respondent concluded annexure A. Which of the aforesaid happenings constitute the first agreement is not clear.
- [4] No dispute had been referred to arbitration at that stage.

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