

SOUTH AFRICA / JUDGMENT

Zwane v Sasol Limited and Sasol Technology (91849/2015) [2017] ZAGPPHC 904 (13 December 2017) [2017] ZAGPPHC 904

COURT

North Gauteng High Court, Pretoria

BEFORE

R G Tolmay

CASE / FILE NUMBER

91849/2015

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IN THE HIGH COURT OF SOUTH AFRICA

(GAUTENG DIVISION, PRETORIA)

Case number: 91849/2015

In the matter between:

PF ZWANE

Vs

SASOL LIMITED AND SASOL TECHNOLOGY

APPLICATION FOR LEAVE TO APPEAL

TOLMAY, J:

INTRODUCTION

- [1] The Applicant, Mr Zwane sought leave to appeal in this matter against the whole order and judgment of this Court, he also brought an application for my recusal. I will first deal with the recusal application.

RECUSAL APPLICATION

- [2] The Applicant seeks that the matter be decided by another judge, other than Deputy Judge President Ledwaba, Judge Sasson or Judge Malopa-Sethosa.

- [3] The Constitutional Court set out the test for determining whether a presiding judge should recuse him/herself in the matter of President of the Republic of South Africa and others v South African Rugby Football Union and others[1]

"It follows from the foregoing that the correct approach to this application for the recusal of members of this court is objective and the onus of establishing it rests upon the Applicant. The question is whether a reasonable, objective and informed person would on the correct facts reasonably apprehend that the Judge has not or will not bring an impartial mind to bear on the adjudication of the case, that is a mind open to persuasion by the evidence and the submissions of counsel. The reasonableness of the apprehension must be assessed in the light of the oath of office taken by the Judges to administer justice without fear or favour; and their ability to carry out that oath by reason of their training and experience. It must be assumed that they can disabuse their minds of any irrelevant personal beliefs or predispositions. They must take into account the fact that they have a duty to sit in any case in which they are not obliged to recuse themselves. At the same time, it must never be forgotten that an impartial Judge is a fundamental prerequisite for a fair trial and a judicial officer should not hesitate to recuse herself or himself if there are reasonable grounds on the part of a litigant for apprehending that the judicial officer, for whatever reasons, was not or will not be impartial".

- [4] The test for bias has been set out by the Supreme Court of Appeal in S v Roberts[2] as follows:

"(1) There must be a suspicion that the judicial officer might, not would, be biased.

(2) The suspicion must be that of a reasonable person in the position of the accused or litigant.

(3) The suspicion must be based on reasonable grounds."

- [5] It seems that the Applicant based his perception that the Court was biased on a remark the Court made at the end of the argument. The Applicant alleged that the Court said that he is not going to like the outcome. The transcript of the proceedings however reveals that the following was said:

"MR ZWANE: No I just want to thank you M'Lady really today in all the experience that I have had I feel that I really appreciate your patients (sic) and how you have conducted this case. In all the courts that I have been and forums that I have been I was beginning to doubt the legal process. In short I would say today I feel like I was before a civilised legal system. Thank you for your patience.

COURT: Mr Zwane you do not have to thank the court we try to give a fair hearing to everyone. One of the parties will not like the outcome but that is an occupational hazard that Judges have.

MR ZWANE: Yes, it does not mean[Intervene]

COURT: [Laughing]

MR ZWANE: It does not mean ... [intervenes]

COURT: One of you will not like the outcome.

MR ZWANE: Well, I am saying by thanking you it does not mean I may not be disappointed M'Lady ... [Intervenes]

COURT: [Laughing]

MR ZWANE: By the outcome but then I will have other recourse M'Lady and with that I am finished." [Court's emphasis]

[6] This was said at the end of the argument. There is no basis on which a perception of bias could have been created by this remark. There is no merit in this application. As a result the application for recusal should be dismissed.

LEAVE TO APPEAL DIRECTLY TO THE CONSTITUTIONAL COURT

[7] The Applicant seeks to be granted leave to appeal against the order of the Court directly to the Constitutional Court

[8] Applicant based his request on what he terms urgent exceptional circumstances. The Respondent denies that there are any special

circumstances, or any urgency as alleged. For the sake of clarity, however brief details are provided in relation to the four pending

applications, which Applicant bases his urgency and exceptional circumstances on.

[9] JS1308/09 - An application in the Labour Court to dismiss Applicant's application to set aside the taxing master's allocator and writs of execution. On 5 May 2016 Applicant advised the Court and Respondents' erstwhile attorneys that he would no longer participate in those proceedings but did not withdraw the application. The matter is set down for hearing on 1 March 2018.

[10] JS419/10 - An application in the Labour Court to dismiss Applicant's action against the Respondents which he has not pursued after the judgment of Tlhotlhamajane AJ dated 6 August 2014, wherein directives were given which required compliance prior to the matter being enrolled for trial. The matter is set down for hearing on 1 March 2018.

[11] 91849/2015 - An application in the present Court to declare Applicant's action against the Respondents vexatious in order to stop the action and all litigation stemming from the action.

[12] 11196/17P - An application in the High Court situated in Pietermaritzburg to declare Applicant a vexatious litigant in accordance with sec 2(1) of the Vexatious Proceedings Act, 3 of 1956.

[13] None of the aforementioned applications played any role whatsoever in the judgment and orders granted by this Court.

[14] In any event the Superior Courts Act[3] specifies that an appeal of a judgment of a single judge lies either to a full Court of the division or to the Supreme Court of Appeal[4]. The Act further provides that:

"If leave is granted under subsection 2(a) or (b) to appeal against a decision of a Division as a court of first instance consisting of a single judge, the judge or judges granting leave must direct that the appeal be heard by a full court of that division, unless they consider -

- (i) That the decision to be appealed involves a question of law of importance, whether because of its general application or otherwise, or in respect of which a decision of the Supreme Court of Appeal is required to resolve differences of opinion; or
- (ii) That the administration of justice, either generally or in the particular case, requires consideration by the Supreme Court of Appeal of the decision, in which case they must direct that the appeal be heard by the Supreme Court of Appeal[5].

[15] It is clear that a Court faced with an application for leave to appeal lacks the judicial power to grant an Applicant leave to appeal directly to the Constitutional Court, thus the relief sought by Applicant in the present application is incompetent.

[16] Therefore the application for appeal to appeal directly to the Constitutional Court cannot be granted.

THE APPLICATION FOR LEAVE TO APPEAL

[17] The application for leave to appeal does not clearly and succinctly set out the grounds for appeal[6]. It consists of a lengthy affidavit which makes it very difficult to establish the exact grounds of appeal. In this regard the Applicant did not comply with the rules, but seeing that he is a layperson the Court did not dismiss the application for leave to appeal on this ground.

[18] The Superior Courts Act 10 of 2013 directs that leave to appeal will be granted if the appeal would have a reasonable prospect of success, or if there is some compelling reason why the appeal should be heard. Leave to appeal can also be granted where the decision sought to be appealed does not dispose of all the issues in the case, but the appeal would lead to a prompt and just resolution of the real issues between the parties..

[19] The Court presided over a number of interlocutory applications which required determination prior to the determination of the claim of the Applicant as set out in the particulars of claim. The nature of these interlocutory applications is set out in the judgment and I refer back to my judgment in this regard.

[20] The interlocutory orders granted do not have the effect of finally determining the dispute between the parties, as a result the orders are in substance interim orders which is not competent of appeal unless exceptional circumstances exist. No exceptional circumstances exist in this matter.

- [21] The decision furthermore does not dispose of all the issues in the case and would as a result not lead to a prompt resolution of the real issues between the parties. As a result the matter is in my view not appealable. For this reason alone the application should be dismissed.
- [22] If I am wrong in coming to the aforesaid conclusion I deal with the main points raised by the Applicant as grounds for his application.
- [23] The Applicant alleges that the judgment is a nullity, is incompetent and that the Court has no jurisdiction to hear the matter. This is clearly incorrect as the Applicant himself pursued the relief in this Court.
- [24] The Applicant alleges that the Court made incorrect factual findings. The judgment incorrectly refers to the filing of the action as being 15 November 2015 instead of 16 November 2015 but there does not seem to be any other valid basis for this allegation. This error is not material and is not relevant to the outcome of the proceedings.
- [25] Applicant alleged that orders were granted that were not sought. The only order that was granted that was not sought, is leave to amend his particulars of claim. Nothing turns on this and actually gave the Applicant an opportunity to amend his papers and proceed with his claim against the Respondents.
- [26] The Applicant further alleges that the Court failed to identify the areas of non-compliance with Rule 18.
- [27] The crux of the matter is that the Applicant's 286 page particulars of claim is drafted in such a way that it lacks clear, concise and material facts setting out a cause of action. The judgment deals with these shortcomings in the pleadings. It is not the duty of the Court to prescribe to a litigant how the particulars of claim should be drafted.
- [28] The Applicant states that the Court failed to deal with numerous points in limine raised by him. None of these points have any relevance to the interlocutory applications that the Court had to determine. Consequently there is no merit in this submission.
- [29] The Applicant also submits that the Court was incorrect in not admitting bundles, documents and CD's which contains evidence which he intends using in the trial proceedings. The Court confined itself to the affidavits before it, as it should have done and there is no merit in this complaint.
- [30] In the light of all the aforesaid I make the following order:
- 30.1 The application for recusal is dismissed;
- 30.2 The Applicant is ordered to pay the costs of the application for recusal.
- 30.3 The application for leave to appeal is dismissed; and
- 30.4 The Applicant is ordered to pay the costs of the application for leave to appeal.

R G TOLMAY

JUDGE OF THE HIGH COURT

DATE OF HEARING OF APPLICATION: 29 NOVEMBER 2017

DATE OF JUDGMENT:

13 DECEMBER 2017

ATTORNEY FOR APPLICANT:

IN PERSON

ATTORNEY FOR RESPONDENT:

JOHANETTE RHEEDER INCORPORATED

ADVOCATE FOR RESPONDENT:

A COOK & M EDWARDS

[1] 1999(4) SA 147 (CC) p 177, para 4

[2] 1999(2) SACR 243 SCA at 251 para 32

[3] Act 100 of 2013

[4] Section 16(1)(c)

[5] Section 17(6)(a)

[6] Erasmus, Superior Court Practice, 01-62

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