

19263/01-dd

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ORDER

Sneller Verbatim/dd

IN THE HIGH COURT OF SOUTH AFRICA

(WITWATERSRAND LOCAL DIVISION)

JOHANNESBURG

CASE NO: 19263/01

2004-11-08

—
In the matter between

RAMPUKAR ISHWARDUTT

Applicant

and

ROAD ACCIDENT FUND

Respondent

O R D E R

WILLIS, J: This is an application to remove the case to the Transvaal Provincial Division in terms of section 3 of the Interim Rationalisation of Jurisdiction of High Courts Act 41 of 2001.

Ancillary relief relating to the transmission to the registrar of the High Court to which the removal is ordered, as provided for in section 3(2) of that Act, is also sought.

A further order is sought that costs of this application are to be costs in the cause.

The particulars of claim in this matter allege that the plaintiff

resides at Reservoir Hills in Durban. They also allege that the accident took place in 1996 in Reservoir Hills.

Paragraph 2 of the particulars of claim allege that the principal place of business of the defendant is situate in Pretoria.

The defendant filed a special plea to the effect that this court had no jurisdiction to hear the matter. That much would seem to be clear and indeed my brother Boruchowitz, J made an order on 6 October 2004 that the defendant's special plea was upheld with costs, including the costs consequent upon the employment of two counsel. Boruchowitz, J ordered that the application for removal of the matter in terms of section 3(1) of the Act be postponed *sine die*.

It is obvious that if this particular application fails the plaintiff will be left remediless by reason of the fact that the claim would have prescribed.

The relevant provisions of the Act are clear. They read as follows:-

- "3. Transfer of proceedings from one High Court to another.
 - (i) If any civil proceedings have been instituted in any High Court and it appears to the court concerned that such proceedings -
 - (a) should have been instituted in another High Court; or
 - (b) would be more conveniently and more appropriately heard or determined in another High Court, the court may, upon application by any party thereto and after hearing all the

parties thereto order such proceedings to be removed to that other High Court."

The plain, ordinary, grammatical, literal and everyday meaning of this section is clear, namely that if it appears to me that these proceedings should have been instituted in another High Court I may, after hearing the parties, make an order removing the matter to that High Court.

Mr Botha, who appeared for the respondent, agreed that the plain, ordinary, grammatical, literal and everyday meaning of the section was precisely as I had understood it to be. He submitted however that if one had regard to the preamble of the Act and the whole purpose for which it had been enacted, clearly what was envisaged was not a case such as this one. Rather the whole Act had to do with transfers of matters which might be necessitated as a result of the rationalisation of the courts.

It is my understanding of the law that where the plain, ordinary, literal, grammatical and everyday meaning of a section in a statute is plain, it is unnecessary, and indeed wrong, to have regard to such external aids as preambles.

In any event it is clear that the purpose of the Act was to promote greater equity and greater efficiency in the administration of justice in our country. I am of the view that it would not be equitable if the applicant in this matter were to be denied a hearing by reason of the jurisdictional point that has been taken.

There is the further point that the Act came into operation after the institution of this action and accordingly whether the Act could

apply in cases such as this. In the first place it seems to me to be obvious that the relevant section refers to actions that were instituted in the past. It pertinently makes use of the past perfect tense in its provision.

Moreover it is trite that ordinarily in matters relating to procedural or adjectival law (as opposed to substantive law) changes that may be instituted would inure to parties in a position such as the plaintiff. Ordinarily a party in the position of the plaintiff is entitled to take advantage of any procedural or adjectival amendment to the law.

It seems to me therefore that a proper case has been made out by the plaintiff and that the plaintiff is entitled to the relief which it seeks.

Certain costs have been reserved. These were the costs of 18 and 20 October this year. It seems to me entirely appropriate that these costs should fall within the costs order which I make.

The following order is made:

1. An order is made in terms of prayers 1 and 2 of the notice of application dated 4 October 2004;
2. The costs of this application, including the reserved costs of 18 and 20 October 2004, are to be costs in the cause.