

9/6/2010

IN THE HIGH COURT OF SOUTH AFRICA  
(NORTH GAUTENG HIGH COURT, PRETORIA)

CASE NO:6600/07

In the matter between:

OUPA MAPAKI NO

and

EQUADOOR INTERACTIVE (EDMS)BPK

In re:

EQUADOOR INTERACTIVE (EDMS)BPK

THE MINISTER OF LABOUR NO

OUPA MAPAKI NO

DELETE WHICHEVER IS NOT APPLICABLE

(1) REPORTABLE: ☒ YES/NO.

(2) OF INTEREST TO OTHER JUDGES: ☒ YES/NO.

(3) REVISED.

9/03/2010  
DATE

SIGNATURE

Excipient

Respondent

Plaintiff

1<sup>st</sup> Defendant

2<sup>nd</sup> Defendant

JUDGMENT

MURPHY J

1. This is an exception taken by the second defendant to the plaintiff's particulars of claim.

2. In terms of the particulars of claim the plaintiff claims that it entered into an agreement between itself and the defendants, properly represented by the second defendant, which agreement related to the provision of information technology services to the first defendant. The agreement provides for the provision of services and instruction of learners in terms of the relevant project.
3. The first defendant is the Minister of Labour. The second defendant is Mr Oupa Mopaki who is cited in terms of the particulars of claim in his official capacity as the Chief Executive Officer of Isett Seta. The Isett Seta is an authority established by the Minister of Labour in terms of section 9 of the Skills Development Act 97 of 1998 for the purpose of providing training in the relevant sector.
4. The plaintiff claims R624 800 in respect of services it has allegedly rendered. It claims the amount from the first and second defendants jointly and severally, one paying the other to be absolved.
5. The second defendant raises two exceptions to the plaintiffs particulars of claim on the basis that the particulars of claim do not disclose a cause of action alternatively that the particulars of claim lack averments necessary to sustain a cause of action.

6. The first exception maintains that the plaintiff does not have *locus standi* to sue on the agreement. The plaintiff's alleged cause of action against the second defendant is founded in a written agreement, the Service Level Agreement attached to the Plaintiff's particulars of claim. The plaintiff, Equador Interactive (Edms) Bpk is not specifically a party to the written agreement. However, a proper perusal of the agreement indicates that an entity identified as Equador Interactive (Pty) Ltd is indeed such a party. It is obvious that there has been a typing error and that does not sustain an exception on the grounds of the plaintiff lacking *locus standi*. Accordingly, the first exception should be dismissed.
7. The second exception is to the effect that the plaintiff's cause of action against the second defendant cannot be based on the written agreement as the second defendant is not a party to the written agreement. The plaintiff maintains that the second defendant acquired neither right nor incurred any obligations in terms of the written agreement and that there was accordingly no *vinculum iuris* between the plaintiff and the second defendant. Accordingly it has submitted that the plaintiff's particulars of claim do not disclose a cause of action against the second defendant.
8. Paragraph 3 and 4 of the particulars of claim, as well as the fact that the second defendant is cited *nomine officio*, indicates that the second defendant is cited in his representative capacity as the chief executive

officer of the Isset Seta, which is a statutory body. Accordingly, there is no basis for the exception.

9. In the premises, the exceptions are both dismissed with costs.



JR MURPHY  
JUDGE OF THE HIGH COURT

Date Heard: 4 November 2009  
For the Plaintiff/Respondent: Adv FW Botes, Pretoria  
Instructed By: Pieterse & Curlewis Inc., Pretoria  
For the Excipient/2<sup>nd</sup> Respondent: Adv SK Hasim, Pretoria  
Instructed By: Hugo & Ngwenya Inc., Pretoria