

## REPUBLIC OF SOUTH AFRICA




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

8/2/17

77111/16

## CASE NO:

- (1) REPORTABLE: NO/YES  
(2) OF INTEREST TO OTHER JUDGES: NO/YES  
(3) REVISED.  
(4)  Signature Date 28/07/2017

APPLICANT

1<sup>st</sup> RESPONDENT

SUCCESS SOCIAL CLUB

and

PHILIMON PONTSHO RAMATRA

COMMISSIONER, SMALL CLAIMS COURT

MR M S MASHIANE

MBIBANA VAALBANK MAGISTRATE

2<sup>nd</sup> RESPONDENT

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 REVIEW- JUDGMENT
 

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KHUMALO J

[1] The Applicant, a societal club called Success Social Club, seeks a review of the decision made in the Small Claims Court Mbibana Vaalbank Magistrate Court on 10 March 2016 by Commissioner M S Mashiane (the "2nd Respondent"), ordering the club to pay Philimon Ramara ("the 1<sup>st</sup> Respondent") on or before 4 April 2016 an amount of R6 500.00 plus sheriff's costs in the amount of R200.00 on the ground that the Commissioner committed gross irregularity, malice and lacked jurisdiction to hear the matter.

[2] The club also seeks an order directing the 2nd Respondent to refer the matter for hearing and adjudication afresh by the District Civil Court of the Magistrate Court in Mbibana Vaalbank, staying the warrant of execution if issued, pending finalisation

of the review proceedings and condoning its delay in launching the application on 4 October 2016, 7 months after the decision was made.

[3] The 1st Respondent is a member of the Applicant (interchangeably also referred to as "the club") since 2009. In 2015 he was expelled for failing to pay within a period allegedly stipulated in the club's constitution, a fine imposed on him for not informing the members timeously when he changed the venue where he was hosting the club's meeting.

[4] On 7 of June 2015 the 1<sup>st</sup> Respondent, through the Small Claims Court, issued a s 29 (of the Small Claims Court Act, of 1984) letter of demand against the club demanding a withdrawal of the fine alternatively a refund of his membership fees.

[5] Subsequent to the letter, the 1<sup>st</sup> Respondent caused a summons to be issued claiming a refund of an amount of R9 000.00 that constituted the joining fee and monthly contributions he paid to the club. The matter was set down to be heard on 26 November 2015. The Defendant entered an appearance to defend and the matter was heard on 10 March 2016, whereupon the order was made.

[6] The Applicant's contention is threefold,

#### JURISDICTION

[7] According to Mr Alfred Pule ("Pule"), the deponent to the Applicant's Founding Affidavit, the Small Claims Court did not have the jurisdiction to entertain the 1<sup>st</sup> Respondent's demand for a refund, as there was no policy that allowed the 1<sup>st</sup> Respondent to reclaim his membership fee, either when he resigns or is expelled, especially after 6 years. Secondly that the court did not have jurisdiction to adjudicate over his expulsion and withdrawal of fines because the disputes are contractual. He argued that the matter resides with the Magistrate Court.

[7.1] In its heads of argument the Applicant alleges that the court lacked jurisdiction due to the difficult or complex facts which could not be adequately decided upon by it.

#### MALICE

[8] Pule alleges further that malice was committed by the Commissioner when he did not consider the fact that the money and the prayers claimed in the letter of demand are not the same as the prayers in the Summons. He argued that according to the documents it is the 1<sup>st</sup> Respondent that owes the Applicant and therefore absurd and shows malice that the Commissioner presided over such a dispute.

#### GROSS IRREGULARITY

[9] Furthermore Pule alleges the following conduct of the Commissioner to have amounted to gross irregularity:



[9.1] Not allowing him to make a representation as a secretary of the Applicant but instead choosing David Mathobela, a member of the Applicant to go out and negotiate a possible settlement with the 1st Respondent whereby the latter would be reinstated without a payment of a fine.

[9.2] Refusing to consider or take time to read his written representations tabling the benefits 1<sup>st</sup> Respondent gained from the Applicant as a result ordering the Applicant to pay a total of R6 700.00 which he does not know how the amount was calculated or arrived at.

[9.3] His refusal to be referred to a clause 12.1 in the Constitution that would have assisted him in his judgment.

## CONDONATION

[10] The Application was brought a few days outside the 6 month period. Pule explains that the members of the Applicant failed to take a decision on the matter during their meeting on 30 April 2016. However on subsequent advise of the clerk of the court during May 2016 they decided to engage the services of an attorney to take the matter on review. It thereafter took them a considerable time to raise the funds required by the attorney, at which point the resolution dated 1 May 2016 was taken and forwarded to the attorneys to proceed with the review. The explanation, especially that the resolution was taken and forwarded to the attorneys after a considerable time had passed whilst they were looking for money, does not make sense. The resolution was taken in a meeting held on 1 May 2016 and signed also on that date, a day after Pule alleges the club members could not take a decision. Be as it may I still deem it fit to grant condonation since the Applicant is only delayed by a few days, therefore in the interest of justice to do so.

[11] The court has also noted that the Application for review was served upon the clerk of the Magistrate Court Mbibana Vaalbank, instead of upon the Clerk of the Small Claims Court whose stamp is reflected on the court's s 29 demand and summons, which may be the explanation for the matter being unopposed. The Applicant's counsel argued that proper service was effected on all the persons cited in the Application including the 2<sup>nd</sup> Respondent. Since the documents relating to the proceedings in that court were filed of record albeit with no reasons, I accepted such service.

## ASSESSMENT

[12] On the point raised on jurisdiction, the Applicant's Constitution neither provides for what happens to the membership fees at the instance of resignation or expulsion of a member nor does it cover the reason for which the 1st Respondent was expelled. The matter therefore remains in the jurisdiction of the court. Even Applicant's allegation that the matter is contractual does not disbar the court from hearing the matter as the Small Claims Court has jurisdiction to hear monetary claims found in contracts.

[13] On the complexity of the matter- The decision whether or not a case before the court is complex such that it needs to be heard in another competent court of law



is that of the Commissioner. If in his opinion the matter contains difficult or complex issues of law or fact which he cannot adequately or fairly decide upon he is required to stop the proceedings (see s 23 of the Act 61 of 1984 ). The Plaintiff may then institute a new action in another competent court. Consequently the contentions raised by the Applicant on jurisdiction have no merit.

[14] In respect of the alleged malice for failure to consider the difference in the demand and the prayers in the summons. 1<sup>st</sup> Respondent in his letter of demand demands that the Applicant withdraw the R300.00 fine imposed upon him or refund him of the cash he paid since he joined the club as the reason or motive of his expulsion is unknown to him. In the summons he does not proceed with the demand for the withdrawal of the fine, but only with the claim for the refund. He stipulates the amount he is to be refunded to be an amount of R9 000.00 which constitutes the joining fee and monthly contributions he made to the club. There is therefore no contradiction or material difference as alleged by the Applicant except that in the Summons the claim is more detailed and minus the claim for withdrawal of the fine.

[15] The purpose of a letter of demand is to inform a party, whose liability has arisen without a date being fixed for payment, of the claimant's claim and his intention to sue upon it. It is therefore to place the debtor in *mora* ; see *Kessel v Davies* 1905 TS 731 at 733. The creditor in issuing a demand in the court furnishes the Defendant with information of his claim in order to obtain a settlement thereof before instituting an action, to limit costs. A demand asking a defendant "to settle an account for rent", though no amount was mentioned as in *casu* was held to be a good demand; see *Wodehouse v Van Rensburg* 1908 DC 183. It would be expected that in the summons issued following a demand, the Plaintiff may amend and or elaborate more on his claim, as therein he is required to furnish particulars of his claim, that is the facts relied upon and the amount.

[16] Furthermore due to the inquisitorial nature of the proceedings in the Small Claims Court, the Commissioner when hearing or adjudicating a matter, is entitled to take into consideration the letter of demand and the Summons. Normally the Commissioner will scrutinize the documents to determine the key facts that are in dispute. Based on the disputed facts the Commissioner may enquire about the possibility of a settlement. If both parties are amenable, he may give them an opportunity to explore a settlement privately or in the presence of the Commissioner. If they agree to settle, the settlement will be recorded and made an order of the court. If both parties appear but fail to come to an agreement, the Commissioner will proceed with the hearing. The conduct therefore complained about by the Applicant is not irregular.

[17] The Commissioner proceeds inquisitorially to ascertain the relevant facts and may do so by requesting the plaintiff to describe the facts stated in the summons, the order in which they occurred, and to provide details of the amount claimed or allegedly owed. Those are the parameters within which the Commissioner would establish the *facta probantia* of the Plaintiff's claim.

[18] Where the Defendant had not filed a statement of his defence, the Commissioner will allow *viva voce* evidence of the defence with the submission of any further documents relied upon by the parties. Further, evidence may be on an

affidavit and the deponent must be available to the court for questioning. A document or written statement not commissioned or made under oath by persons not available during the hearing is not admissible. Pule wanted to submit or present at the hearing a written statement not made by him but by one Mr A Nkutshweu.

[19] The clause 1.21 of the Constitution referred to by the Applicant provides for instance of failure by a member to pay his premiums, which are defined as the contribution levied against each member monthly. It has got no relevance to the dispute between the parties, which was about the failure to pay a fine. There was therefore nothing irregular or unacceptable in the Commissioner's refusal to consider any referral to the clause.

[20] In respect of representation, a company or a juristic person being sued may be represented by a director or other officer which can be any of its duly authorised employees. In its heads of argument, counsel argues that the written statement which was sought to be presented conferred authority upon Pule to represent the Applicant during the hearing in the Small Claims Court. As mentioned the statement is not under oath and written by a Mr Nkutshweu who according to the document would have warranted, by his signature that he, not Pule, was duly authorised to sign any documentation relating to the matter. Pule's name is not mentioned anywhere in the document. If Pule was desirous of submitting evidence he could have done so orally under oath.

[21] The Applicant has failed to prove any of the alleged malice or gross irregularity on the conduct of the Commissioner.

It is therefore ordered that:

[1] The Application is dismissed with costs.



N V KHUMALO J

JUDGE OF THE HIGH COURT  
GAUTENG DIVISION: PRETORIA

For the Applicant:	D MPHAHLELE
Instructed by:	C J NTSOANE ATTORNEYS
	C/O M T MAKWELA ATTORNEYS
	Tel: 015 291 2368
	Fax: 086 667 3255

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