

22/9/17



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

CASE NO: 13765/13

| | |
|---------|-------------------------------------|
| (1) | REPORTABLE: YES / NO |
| (2) | OF INTEREST TO OTHER JUDGES: YES/NO |
| (3) | REVISED. |
| 22/9/17 | |
| DATE | SIGNATURE |

In the matter between:

HAPPY EZEKIEL SEGAGE

1ST APPLICANT

GERDA KELEBOGILE SEGAGE

2ND APPLICANT

And

PETROSITE (PTY) LTD

RESPONDENT

JUDGMENT

MOKOENA AJ

- [1] The Applicants in this matter seek condonation for the late filing of their consequential amendments. It is not clear to me what it means by "consequential amendments". But that is how they have framed the relief they seek in their Notice of Motion. They state at paragraph 3 of their Founding Affidavit that they seek condonation for non-compliance with a Court Order of Makhubele AJ, dated March 31st 2014, in terms of which they were granted leave to amend their plea within fifteen(15) days of the Court Order and they have failed to do so timeously.

- [2] The relevant part of that Order to which I am referred reads as follows:-

"The Defendants are granted leave to amend their counterclaims in reconvention as they may be advised and their plea in convention that it has been set aside..."

- [3] Contrary to what they said at paragraph 3 of their Founding Affidavit, is an averment at paragraph 11.1 of their Replying Affidavit to the effect that *"the amendment before Court does not seek to redress the former counterclaims for which leave was granted"*. They claim to have abandoned their counterclaim.
- [4] To add to the conflicting statements in the Applicants' application was the address made by their Counsel Mr Groenewald during argument. He informed the Court that what the Applicants said at paragraph 11.1 of their Replying Affidavit was factually incorrect. No substantive facts were placed before me in a form of a Supplementary Affidavit to explain why Counsel made such a submission.
- [5] What was also confusing relating to this application, was a further submission by Mr Groenewald that the Applicants in their application are asking the Court to grant them leave to amend their plea as ordered by Makhubele AJ and to raise a point of law. There were no facts placed before me as to why they approached the Court for leave to raise a point of law.
- [6] I asked Mr. Groenewald to confirm whether their application was based on the leave they obtained from Makhubele AJ to amend their plea and counterclaim within fifteen (15) days of the Order and the Applicants have failed to do so. He agreed. He further agreed that the said Order does not deal with leave to raise a point of law. It is on that basis I said there are not facts before me as to why the Applicants approached the Court for leave and condonation to raise a point of law.
- [7] Mr Groenewald could not assist the Court as to what is exactly the Applicants are seeking in their confusing application with conflicting statements. What he told the Court was that he is in the predicament to which the Court finds itself. Now, if Mr Groenewald was in the predicament to explain to the Court what relief is sought by the Applicants who must do so.

- [8] The Respondent opposed their application on two grounds. The first is that the Applicants have not provided a detailed explanation for their default and that their default was flagrant or gross and was as a result of contempt of the Court authority and the rules of the Court.
- [9] In support of its contention, the Respondent referred me to a letter from the Applicants attorneys dated 25 November 2014 and marked "P4". The relevant part of that letter reads thus: - *"[...] we do not understand why the Acting Judge put time frames amendments can be made at any time before Judgment"*.
- [10] Ordinarily an Applicant seeking condonation will be required to satisfy the Court that there is a proper application before it setting out the grounds for the relief sought in the Notice of Motion. The question whether there is proper application before Court will require the Court to traverse the Applicant's papers filed on record.
- [11] In the present case, the Applicants' have filed both their Founding and Replying Affidavits which are materially contradictory to each other. In addition, they are asking this Court to condone and to grant them leave to raise a point of law. The rules of this Court are very much clear as to the procedure that must be followed in raising a point of law, and they also state a time frame to do so. There are no facts before me to support the relief they seek and it is not one of the reliefs they are seeking in their Notice of Motion.
- [12] It is trite that a litigant stand or fall by his papers before court and cannot present his case from the bar to the prejudice of the other party. I am of the view that the Applicants have failed to do so for the reasons already stated.

I accordingly make the following Order:-

The application for condonation for the late filing of the Applicants' consequential amendments is dismissed with costs.


M.B. MOKOENA

ACTING JUDGE OF THE HIGH
COURT

Date of Hearing : 19 June 2017

Judgment Delivered : 22 September 2017

APPEARANCES

For The Applicants : Adv. Groenewald

Instructed By : MPOYANA LEDWABA ATTORNEYS

130 Main Street

NLeuw Muckleneuk

PRETORIA

For The Respondent : Adv. Ngutshana

Instructed By : RABORIFI R. ATTORNEYS

C/O Mahlaola Attorneys

209 Olivettei House,

100 Pretorius Street, Arcadia

PRETORIA