

IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA



CASE NO.: A375/17
COURT A QUO CASE NOS: SEC3112/16; SEC3113/16
SEC3114/16; 3115/16; 3116/16; 3117/16
SEC3118/16; 3119/16; 3120/16; SEC3121/16;
SEC3122/16; SEC3123/16; SEC3124/16

- (1) REPORTABLE: ~~YES~~ / NO
(2) OF INTEREST TO OTHER JUDGES: ~~YES~~ / NO
(3) REVISED.

19/12/2018

In the matter between:

ANDERSON INSURANCE UNDERWRITING
MANAGERS CC
(FSP NO. 39695)

Appellant

and

THE ONLY PROFESSIONAL MODERN
AUTOBODY CC t/a MODERN COLLISION REPAIR
CENTRE
(Registration No.: 1988/33673/23)

Respondent

JUDGMENT

VAN DER WESTHUIZEN, J

- [1] This is a civil appeal originating from the Secunda Magistrate's Court where on 30 May 2017 thirteen summary judgments were granted in favour of the respondent.
- [2] The respondent takes a point *in limine* that this court does not have jurisdiction to hear the appeal. It is submitted on behalf of the respondent that, whereas the appeal originates from the Secunda Magistrate's Court, which falls within the jurisdiction of the Mpumalanga Division of the High Court of South Africa, it thus stands to be heard in that division.¹ The respondent has taken a second point *in limine*, namely that the appellant has committed an irregularity in prosecuting the appeal in that thirteen matters are lodged under the same appeal number without any consolidation of the matters. In view of the approach taken in this judgment, it is not required that the second point *in limine* stands to be decided.
- [3] It was held in *Communication Workers Union v Telkom*² that the crucial time for determining whether a court has the required jurisdiction, is when the relevant proceedings commence, i.e. when the initiating papers are served upon the defendant or the respondent as the case may be.
- [4] In terms of the provisions of Rule 51 of the Magistrate's Court, an appellant is obliged to file its notice to appeal within 20 days from the date of the judgment.
- [5] In the present matter, judgment was delivered on 30 May 2017. The appellant filed its notice of leave to appeal on 31 July 2017, well out of time for filing such notice.³ The appellant has filed an application that the late noting of the appeal be condoned. That application was served

¹ See section 6(1(f) of the Superior Courts Act, 10 of 2013; see also Government Notice No. 956, published on 1 September 2017.

² 1999(2) SA 586 (T)

³ *Murray & Daddy (Pty) Ltd* 1959(4) SA 137 (NPD)

and filed on 16 January 2018, some five and a half months after the belated notice of appeal was served and filed.

- [6] It is trite law that the court of appeal may in its discretion condone the non-compliance with the time period within which to note the appeal. That discretion is afforded the court hearing the appeal.
- [7] In the present instance, the point is taken that this court does not have the required jurisdiction to entertain this appeal. If it is correct that this court does not have the required jurisdiction, then this court cannot consider the application that the non-compliance with the provisions relating to the time for noting the appeal is to be condoned.
- [8] The respondent premises its point in respect of the non-jurisdictional fact upon the provisions of Government Notice No. 956, published on 1 September 2017. The effective date is stipulated to be 1 September 2017. In terms of that notice, the Middelburg Circuit Court of the Mpumalanga Division shall have jurisdiction of all civil and criminal matters arising within its designated areas of jurisdiction, which includes matters arising from Secunda.
- [9] As at 1 September 2017, the noting of the appeal was out of time and no application was pending condoning the late noting of the appeal. For all intents and purposes, there was no appeal pending. Only once an order is granted extending the period within which to note the appeal, would an appeal be pending. It follows that such order could only be granted sometime after 1 September 2017 and in the present instance after 16 January 2018.
- [10] It follows that there is no appeal before us to consider.
- [11] The appellant submits that the foregoing is of no consequence. It is submitted on behalf of the appellant that the Mpumalanga Division of the High Court of South Africa has as yet not been promulgated in the

correct and appropriate manner and thus the Gauteng Division of the High Court retains jurisdiction to entertain the appeal and to hear any application related thereto.

- [12] The Judge President of the Gauteng High Court has the authority in terms of the provisions of section 50(2) of the Superior Courts Act, 10 of 2013, to establish Civil Circuit Courts. The Mbombela and Middelburg Civil Circuit Courts were so established. A practice directive for those Circuit Courts was published during 2015 and which practice directive was to become operative from 1 February 2016.
- [13] In terms of that practice directive, all matters arising from 1 February 2016 and within the said Circuit Courts' jurisdiction, were to be heard by those Circuit Courts. Further in terms of that practice directive, matters issued and pending in the Gauteng Division of the High Court and which ordinary have been issued in either of the said Circuit Courts, has such courts been established at the time of the institution of such proceedings, such proceedings may be transferred to the relevant court. Such transfer would be appropriate for the sake of the convenience of the parties and where an earlier date for hearing is a likely probability.
- [14] It is recorded earlier that the matters that are the subject of the appeal, commenced during 2016 and that judgment in each of them was delivered on 30 May 2017.
- [15] At best for the appellant, there may be a pending application for condoning the late noting of the appeal. In that regard, the appropriate court to hear the application condoning the late filing of the appeal and, if granted, the appeal, is the Middelburg Circuit Court of the Mpumalanga Division. There, before us, is no application for the transfer of such application for condoning the late noting of the appeal.

[16] It follows, in my view, that this court does not have the requisite jurisdiction to hear the appeal.

I propose the following order:

The appeal is struck from the roll with costs.

I agree,


C.J. VAN DER WESTHUIZEN
JUDGE OF THE HIGH COURT


J. DLAMINI
ACTING JUDGE OF THE HIGH COURT

On behalf of Appellant: C B Garvey
Instructed by: OTTO KRAUSE INC.

On behalf of Respondent: J de Beer
P Ellis
Instructed by: STEYN STRYDOM & VILJOEN INC.