

REPUBLIC OF SOUTH AFRICA



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

CASE NUMBER: 12440/2011

APPEAL CASE NO: A724/14

1) REPORTABLE: YES <input checked="" type="radio"/> NO
2) OF INTEREST TO OTHER JUDGES: YES <input checked="" type="radio"/> NO
3) REVISED. <input checked="" type="checkbox"/>
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In the matter between:

**THE MINISTER OF RURAL DEVELOPMENT
AND LAND REFORM**

Appellant

and

GRIFFO TRADING CC

Respondent

JUDGMENT

WRIGHT J

1. Griffo Trading CC, the respondent in this appeal instituted action as early as 2011 against the Minister of Rural Development and Land Reform, who is the present appellant. Griffo sought payment for goods allegedly sold and delivered to the Minister's department. Pleadings closed but the Minister failed to make discovery despite an order by Bam J on 17 September 2012 compelling discovery. On 27 November 2012 Kubushi J struck out the Minister's defence and granted judgment against the Minister for failure to discover.
2. The Minister launched an application to rescind the orders of Bam J and Kubushi J. The Minister, at the same time applied for leave to amend the plea. Bertelsman J dismissed these applications. The typed, signed judgment of Bertelsman J is dated 28 October 2014, an *ex-tempore* judgment having been delivered on 4 November 2013.
3. Thereafter, the Minister applied for leave to appeal the order of Bertelsman J and for leave to lead further evidence. Bertelsman J granted leave to appeal to the present court (including leave on the question of leading further evidence) at least partly because he was to some extent moved by the detailed allegations of fraud against Griffo contained in an affidavit belatedly setting out in detail a defence based on fraud. This affidavit forms the basis for the amendment to the plea and the request to lead further evidence. Briefly, the appellant denies placing the orders and denies receiving the goods. While Griffo strongly denies these allegations there is in my view a *bona fide* and reasonably raised triable issue. Having

taking into account the contents of the new evidence for the Minister on the question of fraud there is no need to make a specific order concerning this evidence. It would be premature to rule now on the admissibility of evidence at trial.

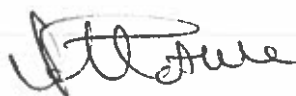
4. It is common cause that the appeal has lapsed but there is an application before us for reinstatement. The papers before us are lengthy and complicated. Griffó criticises the conduct of the Minister's staff and that of the State Attorney. One understands the frustration of Griffó in the perhaps at times slow moving pace in the State Attorney's office. On balance, I would not penalise the Minister other than to award costs against the Minister in the present appeal and in the proceedings leading up to it.

ORDER

1. Condonation is granted, the appeal is reinstated and it is upheld.
2. The order of Bertelsman J of 4 November 2013, that of Kubushi J of 27 November 2012 and that of Bam J of 17 September 2012 are set aside.
3. The appellant is granted leave to amend the plea as sought. The amended plea is to be delivered within 10 court days of the handing down of this judgment.
4. The appellant is to pay the costs of the respondent on the party and party scale, including those of senior counsel where so employed, in the present appeal (including the condonation and reinstatement applications) and in all the applications before Bertelsman J (including the application for leave to appeal and the application to lead further evidence). These costs also include those of one previous set of wasted costs on appeal when costs were reserved.

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WRIGHT J

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MOTHLE J

I agree

A handwritten signature in black ink, appearing to read 'J Louw' in a cursive style.

LOUW J

I agree

APPEARANCES

For the Appellants: Adv KM Mokotedi

For the Respondent: Adv De Villiers SC

Date of hearing: 7 August 2019

Date of judgment: ?