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

Case no: 020842/2023

(1)	REPORTABLE: NO
(2)	OF INTEREST TO OTHER JUDGES: NO
(3)	REVISED.
.....	
DATE: 18 November 2024	SIGNATURE

In the matter between:

CHRIS ANDRIES VAN DER WALT

First Applicant

CRAIG REDVERS HOUSEHAM

Second Applicant

and

JUSTSOLVE (PTY) LTD

First Respondent

(Registration Number: 2016/099112/07)

WILLEM BOTHA VAN DER VYVER

Second Respondent

(ID: 8[...])

SUNETTE VAN DER VYVER N.O

Third Respondent

LOUIS JACOBUS SCHOEMAN

Fourth Respondent

JOHANN RABE

Fifth Respondent

(ID: 8[...])

JUSTSOLVE HOLDINGS (PTY) LTD

Sixth Respondent

(Registration No: 2021/389089/07)

JUDGMENT

MAKHOBHA, J

[1] The first and the second applicant are sole directors and shareholders of a technology company known as Amoeba Mobile Solutions (Pty) Ltd trading as Amoeba TSC.

[2] The first respondent is Justsolve (Pty) Limited (hereinafter referred to as “JS” or as Justsolve). The company is registered in terms of the Company Laws of the Republic of South Africa.

[3] The second respondent is Willem Botha Van der Vyver a director of the first respondent (He is hereinafter referred to by his forenames namely “Botha”.) He is also a trustee of the Lurise Trust which is a Family Trust.

[4] The third respondent is Sunette Van der Vyver businesswoman and the second respondent’s wife. She is cited in her capacity as a co-trustee of Lurise Trust.

[5] The fifth respondent is Mr Johan Rabe a businessman. He is cited herein because it is alleged that he is a shareholder of Justsolve.

[6] The sixth respondent it is alleged holds of 52% of the voting right and economic interest in Justsolve.

[7] According to the first and second applicants it was agreed between them to use the first respondent as an entity to establish a software development business. The fifth respondent joined in this venture holding a 10% stake.

[8] It is submitted on behalf of the applicants that the second respondent in May 2020 issued a share certificate for 60% of the shares to Van der Walt (the first applicant).

[9] The first and second applicants assert that each had 30% shares in the first respondent and they both agreed that the share would be owned by the first applicant for 60% and all share certificates should be issued to the first applicant.

[10] The shares were then split as follows:

10.1 First and Second applicant 60% consolidated.

10.2 Second respondent 30%

10.3 Fifth respondent 10%

[11] Whereas the first and the second respondents dispute the allegation that the applicants have a 60% shareholding in the first respondent ("Justsolve").

[12] They argue further that the share transfer agreement is void. They submit further that the applicants failed to comply with any preemptive rights and other company specific regulations in the alleged acquisition of the shares.

[13] It is contended on behalf of the respondents that, the allegations by the applicants that the second respondent acted deceitfully, with misleading behaviour or fraudulently, such allegations inherently suggest an expectation of the factual dispute between the parties and must be proved with clear evidence and cannot be inferred.

[14] It is contended further on behalf of the respondents that the complex factual nature of the dispute between the parties renders the issue unsuitable for a resolution through application proceedings as the factual disputes cannot be decided upon by means of affidavits.

[15] The respondents further ask the court to strike out in the founding affidavit and annexures allegations which are scandalous, vexatious or irrelevant.

[16] On behalf of the respondents it is submitted that extensive litigation history between the parties amounts to abuse of the judicial process. Such conduct warrants dismissal of the application with punitive costs.

[17] In the alternative should the court find against the dismissal of the application, it is prayed that the court grant an order compelling the transfer of shares to the second respondent.

[18] It is trite that where an application cannot properly be decided on affidavit, the court may direct that oral evidence be heard on specific issues with a view to resolving any dispute of fact.¹

[19] If a dispute of fact arises on the affidavits a final order can be granted only if the facts averred in the applicant's affidavits, which have been admitted by the respondent, together with facts alleged by the latter justify such order.²

[20] Thus it is imperative that oral evidence be led where there is a material dispute of facts. The court must guard against fictitious disputes of fact.

[21] The rule relating to foreseeability of serious dispute of fact applies only to dispute of fact that, cannot be resolved on paper.³ If the dispute of a material fact, should have been foreseen by the applicant the court may dismiss the application.⁴

[22] Our courts have always maintained the view that serious allegations of fraud may require *viva voce* evidence.⁵ In paragraph 116 of founding affidavit the first applicant accused the second respondent of lying under oath.⁶ To accuse someone

¹ Manuel v Sahara Computers (Pty) Ltd and another [2019] 2 All SA 417 (GP).

² Plascon – Evans Paints Ltd v Van Riebeeck Paints (Pty) Ltd [1984] 2 All SA 366 (A).

³ Cullen v Haupt 1988 (4) SA 39 (C).

⁴ Room Hire Co (Pty)- Ltd v Jeppe Street Mansions (Pty) Ltd 1949 (3) SA 1155 (T).

⁵ Korff v Scheepers en Andere 1962 (3) SA 83 (W)

⁶ CaseLines 002 – 44 See also par 320 and par 443.

of lying under oath in my view is very serious and amounts to a material dispute of fact as in this matter before me.

[23] In paragraph 439 of his founding affidavit⁷ the first applicant warned the second and fifth respondents that this matter is not only a civil matter but also a criminal matter. Again, in my view this threat amounts to serious insinuations against the respondents.

[24] The argument about the shares, allegation of tax evasion, amounts owed to the first respondent by the company Justsolve and also the assertion by the second respondent that the share agreement is void, this amounts in my view to serious material dispute of fact between the parties.

[25] In paragraph 472 of the founding affidavit it is alleged by the first applicant that the document marked annexure "CVDW 205" which is the securities register was fabricated. This allegation is a serious disparaging allegation against the second respondent which in my view necessitate intense scrutiny under oath.⁸

[26] I am of the view that the relief sought cannot succeed, the applicants should have taken the matter on trial rather than the application procedure.

[27] I make the following order:

1. The matter is referred for the hearing of oral evidence on the issues of:
 - 1.1. whether the share certificate issued to the Applicant on 26 May 2020 for 210 fully paid ordinary shares (of the issued 350 shares) in the First Respondent, was conditional as alleged by the Second Respondent;
 - 1.2. Whether the securities register of the First Respondent stands to be amended to reflect Applicant as the holder of 60% (210 out of 350 shares) of the First Applicant.
 - 1.3 The application to strike out allegations in the founding affidavit and annexures which is scandalous, vexatious or irrelevant.

⁷ CaseLines 002 – 140.

⁸ CaseLines 002 - 151

2. The evidence shall be that of any witness whom the parties, or either of them, may elect to call.
3. Either party may subpoena any person to give evidence at the hearing.
4. Within 20 (twenty) days of making this order, each of the parties shall make discovery, on oath, of all documents and recordings relating to the issues referred hereby to oral evidence, which are in their possession or under their control, which has not already been transcribed and attached to this application.
5. Such discovery shall be made in accordance with Rule 35 of the Uniform Rules of Court and the provisions of Rule 35, with regards to inspection and production of discovered documents, compelling discovery/inspection and calling for further and/or better discovery shall be operative.
6. The incidence of the costs incurred up to now shall be determined after the hearing of oral evidence.

MAKHOB A J
JUDGE OF THE HIGH COURT
GAUTENG DIVISION, PRETORIA

HEARD AND RESERVED JUDGMENT: 6 NOVEMBER 2024

JUDGMENT HANDED DOWN ON: 18 NOVEMBER 2024

Appearances:

For the Applicant: Adv J O Williams SC with Adv R Raubenheimer (instructed by) Coombe Commercial Attorneys Inc.

For the First and Second Respondent: Adv M P van der Merwe with Adv C Richard (instructed by) Weavind and Weavind Inc.