

**IN THE HIGH COURT OF SOUTH AFRICA  
(EASTERN CAPE LOCAL DIVISION)**

**CASE NO.: 1509/12**

In the matter between:-

**WANDA DOTWANA**

**PLAINTIFF**

And

**MBULELO TAFENI**

**DEFENDANT**

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**JUDGMENT**

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**HINANA AJ:**

[1] On 17 April 2013, the plaintiff served and filed a discovery affidavit deposited to by Wanda Dotwana.

[2] On 26 April 2013 defendant's attorneys filed a notice in terms of Rule 30. The grounds for Rule 30 Notice are:-

(a) The Commissioner of oaths in plaintiff's discovery affidavit dated 4<sup>th</sup> April 2013 is also plaintiff's attorney, contrary to the requirements of Regulation 7 (1) of GN R774 of 23 April 1982 which prescribes that:-

‘the person attesting the affidavit is required to be unbiased and impartial in relation to the subject matter of the affidavit’.

(b) Plaintiff's notice of filing dated 7<sup>th</sup> November 2012, plaintiff's notice of intention to amend dated 19 October 2012 and amended particulars of claim dated 2<sup>nd</sup> November 2012 were signed by the very same Commissioner of Oaths who attested to plaintiff's discovery affidavit.

(c) **The signature of the Commissioner of Oaths on the plaintiff's discovery affidavit and that of plaintiff's attorneys as reflected on the notices and pleadings referred to in paragraph (b) above is identical and therefore of the same person. (Emphasis mine).**

[3] Mr Vuthula appeared for the defendant and Mr Mgxaji appeared for the plaintiff.

[4] Mr Vuthula argued (and without any legal basis or case law) that this court must look at the signatures and will see that the signatures are glaringly the same. I asked Mr Vuthula on what basis can this court make a finding that the signatures are glaringly the same because this court lacks the expertise to compare signatures. His response was that this court does not have to have expert evidence in this regard but may use its inherent jurisdiction and find that the signatures are the same.

[5] In my view, this court cannot make a finding that the signatures are the same or not because it lacks the necessary expertise.

**In S v Gouws 1967 (4) SA 527 (EC) at 528 D Kotze J** (as he then was had this to say:-

“The prime function of an expert seems to be to guide the court to a correct decision on questions found within his specialized field.”

(See also **Schneider NO and Others v AA & Another 2010 (5) SA 203 (WCC) at 211J-212B**. The Constitutional Court in **Glenister v President**

**of the Republic of South Africa & Others 2013 (11) BCLR 1246 CC** held that:-

“Expert witness testimony on an ultimate issue will more readily tend to be relevant when the subject is one upon which the court is usually quite incapable of forming an unassisted conclusion (See also **Holtzhauzen v Roodt 1997 (4) SA 776 (WLD)**).

[6] In the circumstances, the following order is made

1. The application in terms of Rule 30 is dismissed with costs.

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**ACTING JUDGE OF THE HIGH COURT**

**ATTORNEY FOR THE PLAINTIFF:**

Instructed by:

**MR MGXAJI**

Messrs Mgxaji Inc  
Mthatha

**ATTORNEY FOR THE DEFENDANT:**

Instructed by

**MR VUTHULA**

: S.C Vuthula & Co  
Mthatha

Case heard on 25 February 2014

Judgment delivered on 27 February 2014