


REPUBLIC OF SOUTH AFRICA



IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG LOCAL DIVISION, JOHANNESBURG

CASE NO: 19009/14

(1)	REPORTABLE: YES / NO
(2)	OF INTEREST TO OTHER JUDGES: YES / NO
(3)	REVISED.
12/9/2018 DATE	
 SIGNATURE	

In the matter between:

RAUWANE, JACOBETH
obo REVELATION

Plaintiff

and

THE MEC FOR HEALTH GAUTENG
PROVINCIAL GOVERNMENT

Defendant

JUDGMENT ON THE LEAVE TO APPEAL APPLICATION

MAHALELO, J:

[1] I shall refer to the parties as they were referred in the main action. The defendant is the applicant in this application for leave to appeal against the whole of the order which I granted on 6 August 2018 dismissing the

whole of the order which I granted on 6 August 2018 dismissing its five special pleas. Reasons for judgment were handed down on 27 August 2018.

[2] The defendant served a notice of application for leave to appeal on 7 August 2018. This predated the handing down of the reasons for my judgment. The defendant indicated in its notice that it would amplify its grounds for appeal on receipt of reasons for judgment. The defendant was afforded an opportunity to supplement its notice of appeal but nothing much came out of it.

[3] It is necessary that I set out the grounds of the defendant's proposed appeal. They are the following:

- "1. *The learned Judge erred in dismissing the defendant's special pleas.*
2. *The learned Judge erred in not taking into account, sufficiently or at all that the Head: Health was not given notice prior to the institution of legal proceedings, as required in terms of section 3(1)(a) of the Institution of Legal Proceedings Against Certain Organs of State Act 40 of 2000.*
3. *The learned Judge erred in not taking into account, sufficiently or at all that, as mother and natural guardian of Revelation Rauwane ('the minor'), she lacked locus standi to institute the action on the minor's behalf and to administer the affairs and property of the minor.*
4. *The learned Judge erred in not taking into account sufficiently or at all, that the plaintiff's combined summons issued out of the above Honourable Court on 27 May 2014 under case number 14/19009 is void and of no effect.*
5. *The learned Judge erred to take into account sufficiently or at all, that, the plaintiff's summons was improperly served.*

6. *The learned Judge erred in not taking into account sufficiently or at all that the plaintiff's purported claim in her personal capacity to the value of R1 752 000 is prescribed."*

[4] It is apparent from the notice of application for leave to appeal that the grounds for the proposed appeal are exactly the same as the special pleas raised at the commencement of the proceedings.

[5] It is trite that the requirement for leave to appeal is the existence of reasonable prospects of success on appeal. An application for leave to appeal must succinctly and clearly specify the findings of fact and rulings of law which the applicant intends to appeal. It is necessary for the applicant to furnish all the information necessary to enable the court to decide whether or not leave ought to be granted. The application must not be expressed in general and ambiguous terms.

[6] I am obliged to dispassionately consider the application for leave to appeal and decide whether there is a reasonable prospect that an appeal court will come to a different conclusion than the one I arrived at or whether there are any compelling reasons that the appeal should be heard.

[7] Ms Makopo, who appeared for the defendant at the hearing of the special pleas, submitted that the thrust of the application is that there is no authority or clarification on the legal principles regarding failure to comply with section 2(2) of the State Liability Act 2011(*the Act*). She submitted therefore

that the defendant should be granted leave to appeal to the Supreme Court of Appeal so that in future there is certainty regarding this aspect.

[8] Mr Du Plessis SC, who appeared for the plaintiff submitted that the application for leave to appeal has no merit and if anything, is a delaying tactic on the part of the defendant.

[9] It is usually a consideration to be made if there are any compelling reasons for the appeal to be heard. The defendant provided no substantiation for its argument in this regard except to say that the plaintiff's combined summons was served contrary to a direct prohibition of the law contained in section 2(2) of the Act and thus, void and of no force or effect because they were not served on the State Attorney within seven days of issue.

[10] The purpose of section 2(2) of the Act is to ensure that the State Attorney obtains notice of all legal proceedings instituted against an organ of state. The Act does not provide for any consequences if the summons is not served on the State Attorney within seven days of issue. In my view, the plaintiff's non-compliance with the seven-day period provided for in the said section does not result in the summons being a nullity. The plaintiff's intention to institute this action as well as the summons duly came to the attention of the defendant and the State Attorney and the latter advised the defendant accordingly and took all relevant and necessary steps to protect its interests. As stated in my reasons for judgment the defendant did not suffer any prejudice as a result of the said non-compliance with the provisions of the Act

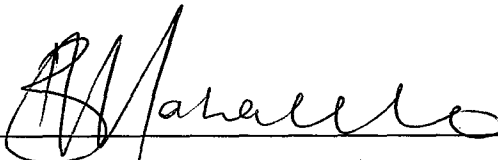
and in my view the Act is no longer applicable. I am of the respectful view that this is not a compelling reason why the appeal should be heard.

[11] In any event, I have duly considered the submissions by the defendant on all the grounds of the proposed appeal and I respectfully disagree for the reasons which are fully set out in a comprehensive written judgment which was handed down on 27 August 2018. Suffice it to say that there is no need to repeat such reasons in this judgment.

[12] In the premises, I am of the view that the defendant does not enjoy a reasonable prospect of success on appeal, and there are no compelling reasons why the appeal should be heard.

[13] In the result, the following order is made:

1. The application for leave to appeal is dismissed with costs.


M B MAHALELO
JUDGE OF THE HIGH COURT
GAUTENG LOCAL DIVISION, JOHANNESBURG

APPEARANCES

For the plaintiff: Adv D Du Plessis SC

Instructed by Du Plessis Attorneys

For the defendant: Adv N Makopo

Instructed by: State attorney Johannesburg

Date heard: 03/09/2018

Judgment delivered on: 12/09/2018