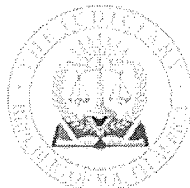


REPUBLIC OF SOUTH AFRICA



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

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

28/4/2021
DATE

[Signature]
SIGNATURE

CASE NO.: 35962/2020

In the matter between:

CHONGQING QINGXING INDUSTRY SA (PTY) LTD

Applicant

and

MINGYING YE

First Respondent

PROSPERITY PLASTIC PRODUCTS (PTY) LTD

Second Respondent

**ALL OCCUPIERS OF 41 BIRD ROAD and
58 DUNCAN ROAD, LILANTON, BOKSBURG**

Third Respondent

LINE METALS (PTY) LTD

Fourth Respondent

JUDGMENT

ROBINSON AJ:

- [1] In this matter I raised an issue with Mr Van Tonder who appears for the applicant concerning the absence of affidavits in this application. The founding affidavit is stated to be sworn to at ChongQing on 3

November 2020. There is however no indication on the affidavit itself that the oath was taken.


- [2] A document appears in Chinese, which is followed by what is stated to be a notarial certificate and the word 'Translation' thereunder. What appears from this translation is that an applicant, Luo Jiayun, came to "our notary public office and signed the foregoing FOUNDING AFFIDAVIT on November 3, 2020 before me, the notary public'. The details of the notary, He Wei, of the Chongqing Notary Public Office, the Peoples Republic of China, appear on the document. What does not appear from the document is that the oath was taken or that it was administered by a person entitled in China to do so.
- [3] The absence of an oath on an affidavit is not a mere technicality. It is indeed the oath that renders a statement admissible as evidence. See *Wingaardt and Others v Grobler and Another* 2010 (6) SA 148 ECG at paragraph [9].
- [4] Section 10 of the Justice of the Peace and Commission of Oaths Act 16 of 1963 empowers the Minister of Justice to make regulations which govern the prescribed form and manner for the administration of an oath. Regulation 4(1) is the relevant regulation. The founding affidavit was, on the face of it, not deposed to in accordance with this regulation. Rule 6(1) has therefore been breached and was not complied with.
- [5] Mr Van Tonder asked that the matter be postponed to enable the

applicant to ascertain whether the oath had been administered by a person enabled to do so.

[6] To this, Ms Jacobs of the respondents, submitted that the absence of the oath was a defect which could not be cured. For this she relied on the decision in *Absa Bank Limited v Botha N.O. and others* 2013 (5) SA 563 GNP. I do not read that judgment to indicate that the error cannot be rectified. To the contrary, the judgment contemplates that further verifying affidavits might have cured the problem (see [12] of this judgment).

[7] In this matter Mr Van Tonder could give no indication about whether or when the applicant might be in a position to provide information about whether the oath was taken. No grounds were advanced to justify the inconvenience that this situation must inevitably caused the respondents.

[8] In the circumstances the applicant has not placed any evidence before court as contemplated in rule 6(1). The application is therefore dismissed with costs.



R M ROBINSON
Acting Judge of the High
Court, Gauteng Local
Division, Johannesburg

DATES OF HEARING: 16 April 2021

DATE OF JUDGMENT:

APPEARANCES:

COUNSEL FOR APPLICANT: Mr D Burrows *b van Tonder*
INSTRUCTED BY: Burrows Attorneys

COUNSEL FOR RESPONDENT: Adv. van Tonder *AA Jacobs*
INSTRUCTED BY: Edward Sithole & Associates Inc