

1.1 REPUBLIC OF SOUTH AFRICA



IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, JOHANNESBURG

CASE NO: 9915/2020

In the matter between:

GAVIN ANTON BROADHURST

Plaintiff/Applicant

and

GEARHOUSE SPLITBEAM (PTY) LIMITED

First Defendant/Respondent

D P HUSSEY

Second Defendant/Respondent

SUMMARY OF JUDGMENT : GILBERT AJ

Delict – Apportionment of Damages Act, 1956 - Section 2(4)(a) – can leave to sue a joint wrongdoer be obtained after the action against the joint wrongdoer for which such leave is sought has already been instituted? – if so, has the

applicant shown good cause why notice was not given as required in terms of section 2(2)?

1. The plaintiff instituted action against joint wrongdoers in circumstances where the plaintiff had already instituted action against other joint wrongdoers for the same damage in delict. The plaintiff did so without having furnished the required statutory notice of the first action to the further joint wrongdoers now sued in the second action, as required in terms of section 2(2) of the Apportionment of Damages Act, 1956 ("the Act").
2. In the circumstances, the plaintiff fell foul of section 2(4)(a) of the Act, which provides that *"if a joint wrongdoer is not sued in the action instituted against another joint wrongdoer and no notice is given to him in terms of paragraph (a) of subsection 2, the plaintiff shall not thereafter sue him except with the leave of the court on good cause shown as to why notice was not given as aforesaid."*
3. When this failure was raised by special plea by one of the further joint wrongdoers when sued as a defendant in the second action but who had not been given the required statutory notice in terms of section 2(2), the plaintiff launched an application in terms of section 2(4)(a) seeking the leave of the court on good cause shown as to why the plaintiff had not given such notice as required in terms of section 2(2) of the Act.
4. This application was launched by the plaintiff after the further action had already been instituted by the plaintiff against the joint wrongdoer. The

first issue the court had to decide was whether the leave of the court on good cause shown in terms of section 2(4) of the Act could be sought after the action in respect of which such notice is required has already been instituted, and which issue appeared to be *res nova*.

5. The second issue the court had to decide, if it found that such leave could be sought after the event, was whether the applicant had shown good cause for such leave to be granted.
6. On the first issue, the court interpreted section 2(4)(a) to permit an application in terms thereof to be brought after the further action had already been instituted and therefore the plaintiff as applicant was not precluded from seeking such leave of the court in terms of section 2(4)(a).
7. In relation to the second issue, the court found that in the exercise of its wide discretion that leave should be granted in terms of section 2(4)(a) permitting the plaintiff to persist with the further action against the joint wrongdoer.