

**NORTH GAUTENG HIGH COURT, PRETORIA
REPUBLIC OF SOUTH AFRICA**

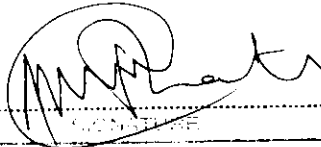
DELETE WHICHEVER IS NOT APPLICABLE

(1) REPORTABLE: ~~YES~~/NO.

(2) OF INTEREST TO OTHER JUDGES: ~~YES~~/NO.

(3) REVISED.

7/11/2012



Case No: 36972/2011

Case No: 44006/2011

Date heard: 18 October 2012

Date of judgment: 07 November 2012

In the matter between:

WILLIAM MALEPE

First Applicant

TELFORD JOUBERT MADUMO

Second Applicant

MPHO PHELADI CHRISTINA MALEPE

Third Applicant

and

PATRICK BONGANI NDABA

First Respondent

JANE SANDRA JANSEN VAN VUUREN

Second Respondent

THE CITY OF TSHWANE MUNICIPALITY

Third Respondent

STANDARD BANK OF SOUTH AFRICA LIMITED

Fourth Respondent

SENAMELE BUILDING CONSTRUCTION AND

CLEANING CC

Fifth Respondent

(with registration no. 2005/007823/23)

IN RE:

SENAMELE BUILDING CONSTRUCTION AND

CLEANING CC

First Applicant

(with registration no. 2005/007823/23)

PATRICK BONGANI NDABA

Second Applicant

JANE SANDRA JANSEN VAN VUUREN

Third Applicant

and

THE CITY OF TSHWANE MUNICIPALITY
 TELFORD JOUBERT MADUMO
 MPHO PHELADI CHRISTINA MALEPE
 WILLIAM MALEPE
 STANDARD BANK OF SOUTH AFRICA LIMITED

First Respondent
 Second Respondent
 Third Respondent
 Fourth Respondent
 Fifth Respondent

Case No: 34977/2012

Case No: 57765/2011

In the matter between:

PATRICK BONGANI NDABA
 JANE SANDRA JANSEN VAN VUUREN

Second Applicant
 Third Applicant

and

TELFORD JOUBERT MADUMO
 MPHO PHELADI CHRISTINA MALEPE
 WILLIAM MALEPE
 SENAMELE BUILDING CONSTRUCTION AND
 CLEANING CC
 (with registration no. 2005/007823/23)
 THE COMPANIES AND INTELLECTUAL AND
 PROPERTY COMMISSION

First Respondent
 Second Respondent
 Third Respondent
 Fourth Respondent
 Fifth Respondent

JUDGMENT

PHATUDI J:

[1] There are four (4) applications between the same parties issued under case numbers 36977/2011; 44006/2011; 57765/2011 and 34977/2012. On the 28 June 2012, under case number 34977/2012 Monthle J ordered:

'1. That all the pending applications for rescission of the Court orders under case No: 36972/201, 44006/2011 and 57765/2011 be consolidated and heard by the same court

2.....

3. That the execution of all judgments and orders made, against which there a rescission applications is pending, is hereby suspended pending the hearing and the final adjudication of the consolidated applications...'

[2] Monthle J further ordered on how Senamele Building Construction and Cleaning CC ought to be managed pending hearing and or finalisation of the matter.

[3] It is further apparent from the court order, by Monthle J dated 01 August 2012, that there is another matter under case No: 43823/2012 in which Monthle J prescribed further directives.

[4] On my perusal of all of these matters, it appeared that there was another matter between same parties under case number 34217/2012. On my enquiry at the hearing, it is submitted that the matter was withdrawn.

[5] At the commencement of the hearing the parties conceded that the matters have not been consolidated as ordered by Monthle J. They submit that the matters be heard separately.

[6] The applicants shall be referred to as Malepes and the respondents as Ndabas.

[7] Ndabas raise two points in limine to both Malepes' rescission applications. Ndabas submits that the order granted by Matojane J on 10 August 2011 is an order granted after the matter was heard with Malepes being represented. This, Ndabas submit, renders the order final and not a default judgment. A record of proceedings before Matojane J is handed up.

[8] Malepes deny having appeared or being legally represented before Matojane J.

[9] On perusal of the record of proceedings (J33) it is clear that the Malepes are not cited as parties to the proceedings. The Malepes are said to be members of Senamele Building Construction much as the Ndabas. Considering the said contentions, it is clear that neither Malepes nor Ndabas were cited as a party to the proceedings.

[10] Comparing an order of court by Matojane J on 10 august 2011, it is clear that the parties cited there at differ materially to the parties cited in the record of proceedings (J33). Notwithstanding Senamele Building Construction being cited as one of the applicants, City of Tshwane Municipality is not cited as the respondent on the Matojane J orders.

[11] In my analysis of the submission made and evidence led, I am of the view that the record of proceedings and the order made by Matojane J do not marry each other. I thus dismiss the point in limine.

[12] After having read all the applications before me, having heard counsel for the parties and having considered all factors, disputed facts and in particular the orders by Mothle J, I am of the view that in the interest of justice, these matters must be consolidated and be referred to trial.

I, as a result, I make the following order:

1. Condonation of the late filing of the rescission of default judgments under Case Numbers 36972/2011 and 44006/2011 is granted.

2. Case Number: 36972/2011; 44006/2011; 57765/2011 and 34977/2012 are consolidated under Case Number 34977/2012.

2.1 Judgment granted by Claassen J on the 29 August 2011 is hereby rescinded.

2.2 Judgments granted by Matojane J on the 10 August 2011 is hereby rescinded

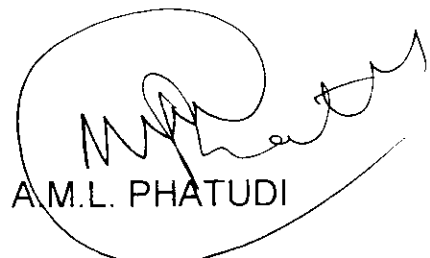
3. The consolidated matters are hereby referred to trial.

4. The applicants under Case Number 34977/2012 (Ndaba and Van Vuuren) be regarded and cited as the plaintiffs and the five respondents under Case Number 34977/2012, as well as the City of Tshwane Municipality and Standard Bank of South Africa, Gezina be regarded and cited as defendants.
5. Any other interested party may join or be joined as a party.
6. Pending finalisation of the consolidated matter:
 - 6.1 Senamele Building Construction and Cleaning CC shall be managed jointly by:
 - Patrick Bongani Ndaba
 - Jane Sandra Jansen Van Vuuren
 - Telford Joubert Madumo
 - Mpho Pheladi Christina Malepe and
 - William Malepe
 - 6.2 All operational transactions, including payment of salaries, relating to the Senamele Building Construction and Cleaning CC shall be approved in writing by all five personnel mentioned in 6.1.

6.3 There shall be no withdrawal or payment of profits to any member of the Close Corporation accrued to Senamele Building Construction and Cleaning CC.

6.4 All payments received for and on behalf of Senamele Building Construction and Cleaning CC shall be made to the banking account of Senamele Building Construction and Cleaning with all five mentioned personnel at 6.1 having joint signing powers to sign out any payment from the account.

6.5 Costs in all consolidated matters be cost in the trial



A.M.L. PHATUDI

Judge of the High Court

On Behalf of the Applicant:

Stuart Van Der Merwe Inc

825 Arcadia Street

Arcadia

Pretoria

Adv J Vorster

Adv J Myburgh

On Behalf of the Respondent:

Mahlangu Mashoko Attorneys

262 Vermeulen Street

502 Karl Kling Building

Pretoria

Adv M Malowa

Adv B Makuya