

(1) RAPPOORTLEGBAAR: JAWNEE.  
 (2) VAN BELANG VAN ANDER REGTERS: JAWNEE.  
 WERS: 11.  
 23/4/2014  
 DADUM  
 HANDTEKE

IN THE HIGH COURT OF SOUTH AFRICA

GAUTENG DIVISION, PRETORIA

Case Number: 10069/10

23/4/2014

In the matter between:

KWINANA AND ASSOCIATES (GAUTENG) INC.

Applicant

And

FORENSIC INSTITUTION (PTY) LTD

First Respondent

SHERIFF PRETORIA EAST

Second Respondent

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### JUDGMENT

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BAM J

1. The applicant, on an urgent basis, applied for an order setting aside the writ of execution under case number 10069/2010 pending the outcome of the appeal set down for 15 October 2014. The application is opposed by the first respondent.
2. The applicant's case is based on the allegation that the said writ of execution was unlawfully issued in that the appeal against the judgment dated 3 September 2010 in terms of which the said writ had been issued, is still pending.
3. The salient facts are the following:
  - (i) On 3 September 2010 judgment was granted by Ranchod J against the applicant in the amount of R819 218,25 in favour of the first respondent;
  - (ii) Leave to appeal was granted on 26 November 2010;
  - (iii) On 11 April 2011 the applicant applied for date to be allocated for the hearing of the appeal. Subsequently, about a year later, the Registrar allocated the date of 15 October 2014.
  - (iv) The first respondent then instituted action against the applicant for payment of R1 628 285,37 for professional services rendered.
  - (v) The latter action proceeded to trial, and on 29 November 2012 Kubushi J, under case number 10069/2010 delivered her judgment.
  - (vi) In the judgment, (par [3], Khubushi J referred to the judgment of Ranchod J and remarked that the matter came before her on the same cause of action as well

as the same amount. Ranchod J, however, only granted an order in the amount referred to in (i) above.

- (vii) Kubushi J further stated, (par [6]), that she was informed by the parties that despite leave to appeal having been granted by Ranchod J, the parties *"agreed that the appeal proceedings be discontinued and the whole matter, including the claims decided by Ranchod J, be referred to the trial court for determination."*
- (viii) In pars [7] to [10] of the judgment, Khubushi J found that the procedure followed by the parties was *"improper"* and that the judgment of Ranchod J could only be set aside on appeal.

4. On 10 March 2014 the first respondent issued a writ of execution, reflecting the balance of R246 591,66, on the first respondent's version (page 45 par 17), "due in terms of the motion court judgment." (That is the judgment of Ranchod J.)
5. It was the first respondent's case (par 45 of the answering affidavit), that the applicant has abandoned the appeal against the judgment of Ranchod J in the motion court and that the applicant failed to prosecute its appeal, which has now lapsed.
6. I am in respectful agreement with Kubushi J that the procedure followed by the parties to agree that the proceedings before Ranchod J should be discontinued is wrong in law. The appeal against the judgment of Ranchod J was clearly not withdrawn or abandoned and is therefore still pending.
7. It follows that the writ of execution issued on the judgment of Ranchod J, albeit for a lesser amount, is suspended pending the outcome of the appeal.
8. In my view the application is indeed urgent, and the applicant is entitled to the relief sought, that is to suspend the writ of execution and costs.
9. Order made on 15 April 2014.



A J BAM JUDGE OF THE HIGH COURT

22 April 2014