

IN THE NORTH GAUTENG HIGH COURT, PRETORIA

[REPUBLIC OF SOUTH AFRICA]

CASE NUMBER: 15315/2013

DATE: 18 SEPTEMBER 2014

NOT REPORTABLE

NOT OF INTEREST TO OTHER JUDGES

In the matter between:

HAZEL NHLABATHI

APPLICANT

And

MPUMALANGA ECONOMIC GROWTH AGENCY

RESPONDENT

JUDGMENT

MAVUNDLA, J.

[1] The issue to determine in this matter was the special plea of prescription raised by the defendant against the plaintiffs claim. The matter was duly set down for the hearing of the special plea. Only the defendant was represented at court but the plaintiff was not. Counsel for the defendant, whose heads of argument were filed in time and relying there on, moved that the special plea be upheld and the plaintiffs claim be dismissed with costs.

[2] The Plaintiff claimed against the defendant the sum of R703 898, 35 which amount the plaintiff alleged is due and payable and arising out of the death benefits of her late husband Mr. Qhinga Hastings Nhlabathi ("the deceased").

[3] The plaintiff in her particulars of claim further averred that:

"In terms of a letter received from MPUMALANGA ECONOMIC GROWTH AGENCY (MEGA) the Plaintiff was nominated as a beneficiary together with the mother of the late Mr Qhinga Hastings Nhlabathi to receive 50% of benefits each and such benefits were divided into 3 (three) categories namely: Group Life Cover for R1 178 130.00 (One Million One Hundred and Seventy Eight

Thousand One Hundred and Thirty Rand), Member's share for R1015 087.72 (One Million Fifteen Thousand and Eighty Seven Rand Seventy two cents) and Spouses (s) cover for R196 355.00 (One Hundred and Ninety Six Thousand Three Hundred and Fifty Five Rand). Please find attached hereto the benefit statement and the nomination of beneficiaries marked as "**HN 1**" and "**HN 2**" respectively.

[4] According to the particulars of claim, on or about the 02nd of February 2010 a payment of the Group Life Cover was made and divided accordingly, but the member share for R1015 087.72 (One Million Fifteen Thousand and Eighty Seven Rand Seventy Two **Cents**) and spouse cover for R196 355.00 One Hundred and Ninety Six Thousand Three Hundred and Fifty Five Rand) was never received by Plaintiff and despite numerous demands and request the Defendant failed to pay Plaintiff and has not paid the outstanding benefits since."

[5] The Defendant in its special plea pleaded that:

5.1 The plaintiff's claim arises from a pension fund benefit wherein the plaintiff was nominated as a beneficiary by her late husband who died in 2009. The plaintiff became aware of the benefits on or about 3rd August 2009;

5.2 The plaintiff's claim (which is a debt) became due and payable from February 2010 as per the plaintiff's summons after the other portion of the claim (the Group Life Cover) was dully paid by the defendant;

5.3 The plaintiffs summons was served during or about

21 March 2013, which is more than three years after the date on which the claim arose?

4.4 In the premises that plaintiff's claim constitute a debt for purposes of sll (d) and 12 of the Prescription Act 68 of 1969.

[6] It is common cause that the deceased was a member of Multikor Pension Fund. The death benefits prior to retirement were as follows:

6.1 Group life cover was R1 178 130. 00

6.2 Member's share was R1 015 087. 72

6.3 Spouses cover was R196 355.00

[7] It is common causes that the deceased had nominated the following people as his beneficiaries, namely the plaintiff 50% and his mother 50%. In respect of member's share the plaintiff was entitled to 50% being an amount of R507543.86. She was also entitled to the spouses cover in the amount of R196 355.00.

[8] It is common cause that on the 2nd February 2010 a payment of the Group Life Cover was made and divided. According to the plaintiff her spouse covers in the amount of R196 355. 00 was not paid. The spouse cover was an amount to be received by none other than the identified spouse of the deceased, the plaintiff without it being shared with any other person. There was therefore an obligation on the part of the defendant to have paid this amount to the plaintiff on the very same day of the 2nd February 2010.

[9] In respect of the member's share the deceased's mother was entitled to 50% of this amount and so too the plaintiff. The defendant, as the entity which was in possession of these amounts, in my view it was duty bound to also pay the respective half shares to the respective identified beneficiaries.

[10] The defendant has also on the merits pleaded that the plaintiff has waived her right to the benefit from the member's share and the spousal cover in favour of the children of the deceased, and her child born of the marriage between the plaintiff and the deceased. However the defendant in her reply to the defendant's plea denied that these amounts were paid.

[11] It is trite that litigation in the High Court is an expensive and challenging aspect for many people, worse so for the formally disenfranchised. The plaintiff comes from this group. It is also notorious fact that the majority from this group is illiterate and ignorant of their constitutionally enshrined rights. They need the protection of the courts but they cannot afford to pay the services which would unlock the protection needed. The defendant contends that the money was paid out and that the plaintiff waived her right. The waiver was not pleaded as a special plea. For that aspect to be investigated would require that the matter should be referred to trial, for discovery of the relevant documentation. However, the special plea, if upheld would avert even such possibility of investigation of the veracity of the defendant's claim that the moneys were paid.

[12] I propose not to decide the special plea. I will reserve that aspect. I propose to direct the defendant, in the exercise of the inherent powers this court has, to produce before this court all relevant documentation showing the amounts and the people to who paid and the supporting documentation in support of the payments.

[13] In the premises the following order is made:

1. That the special plea judgment is reserved;

2. That the defendant is ordered to produce before this court within 20 days of delivery of this order, all supporting documentation showing the names of the persons to whom the amount of R1 015 087. 72 in respect of the Member's share, and R196 355. 00 in respect of the Spouses cover, and the form of payment, as well as relevant bank statements, accompanied with an affidavit filing such documentation.

N M MAVUNDLA

Date of Hearing: 16/09/2014

Date of Judgment: 18/09/2014

APPLICANTS' ATTORNEYS: NKOSI ATTORNEYS AND ASSOCIATED

APPLICANTS' ADVOCATE: NO APPEARANCE

DEFENDANT'S ATT: MATSANE ATTORNEYS INC

DEFENDANT'S ADV : MR. F.I. BALOYI AD SPOLIATION.