



IN THE GAUTENG HIGH COURT, PRETORIA  
(REPUBLIC OF SOUTH AFRICA)

12/12/14

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

SIGNATURE

DATE

CASE NO: 47454/07

In the matter between

PRETORIUS CORNELIUS JACOBUS  
NIGACON CONSTRUCTORS CC

1<sup>st</sup> Applicant  
2<sup>nd</sup> Applicant

and

MANGENESE METAL COMPANY (PTY) LTD

Respondent

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JUDGMENT

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ISMAIL J

[1] The parties are as described above. In the pleadings the applicant is the plaintiff who instituted an action against the respondent as defendant, and the second applicant as a Third party.



[2] The second applicant has since the institution of the application been de-registered in terms of the Close Corporation Act.

[3] The application is brought on behalf of the plaintiff and the third party for a separation of issues in terms of Rule 33(4) of the Uniform Rules of Court.

[4] The respondent/defendant opposed the application it sought issues to be narrowed.

[5] The applicant seeks that the issue of liability be separated from the issue of quantum. Whereas the respondent in its counter application seeks the determination of the issue of whether the applicant has the condition of Manganism to be determined prior to the issue of whether the respondent complied with the emission of manganese dust to be determined, alternatively the respondent is of the view that if the matter is not separated as suggested then the matter should proceed on all issues without any separation.

[6] To explain dispute in another way, the applicant seeks a separation on the merits from quantum whereas the respondent seeks the issue of merits to be broken into two tranches, namely the determination of whether the applicant has Manganism to be determined first and if so the second leg should then be determined namely whether the respondent complied with the legal requirement of dust exposure which was the cause of the applicants condition.



## Legal principles and submissions

[7] Mr Mullin's SC acting for the applicant submitted that the submission by the respondent that the issue of whether or not the applicant suffers from manganism seems to suggest that the respondent is confident that that determination would put an end to the matter. He submitted that no court would disallow the plaintiff from leading evidence of the level of dust exposure during the trial as the issue was directly relevant to the dispute and germane.

[8] The thrust of the respondent's argument, as submitted by Mr Stockwell SC was that it was a matter of economic cost effectiveness coupled with convenience. As I understood his argument, if the separation was to be determined as suggested by the respondent, the trial could be disposed of in five days as opposed to four weeks. Whereas, if it were to be separated along the lines suggested by the applicant it would proceed for a month at great costs to his client.

[9] Rule 33(4) of the rules of court stipulates:

"If, in any pending action, it appears to the court *mero motu* that there is a question of law or fact which may conveniently be decided either before any evidence is led or separately from any other question, the court may make an order directing the disposal of such question in such manner as it may deem fit and may order that all further proceedings be stayed until such question has been disposed of, and the court shall on the application of any party make such order unless it appears that the question cannot be conveniently be decided separately."



It would appear that the rule grants the court a discretion which is subject to the determination of convenience, whether there should be a separation of the issues.

[10] Convenience is an important factor in determining whether a separation of issue should be permitted or not, however it is not the only consideration to be taken into account. It would appear that the parties are both of the view that the matter should be separated. Where they differ, from each other is the actual parameter of the separation.

Applicant believes it should be separated on the traditional boundaries of liability and quantum whereas the respondent wants the separation to be more narrowly demarcated.

[11] *In Minister of Agriculture v Tongaat Group Limited* 1976 (2) SA 357 (D) Miller J as he then was, at 363D-H stated:

“The word “convenient” in the context of rule 33(4) is not used, I think, in the narrow sense in which it is sometimes used to convey the notion of facility or ease or expedience. It appears to be used to convey also the notion of appropriateness;.....It must be borne in mind that the grant of an application under Rule although it might result in the saving of many days evidence in court, might nevertheless cause considerable delay in the reaching of a final decision in the case because of the possibility of a lengthy, barren interregnum between the conclusion of the first hearing at which the special questions are canvassed and the commencement of the trial proper.....

Another factor...relates to the problem of a possible appeal against the decision of the court on the special questions. [t]He...litigation against whom the decision goes...may or may not be entitled to appeal to the Appellate Division before Division before final judgment in case has been pronounced...”

If separation is ordered on the basis of the respondent’s suggestion there would be three separate hearings of the matter. The first relating to manganism and then liability and finally quantum.

This is a clear indication that litigation would continue for many years and that the trial would become a long drawn out matter. Mr Mullin’s submitted



that the parties could appeal each procedure along the way thereby prolonging the trial even further.

Clearly it would not be in the interest of justice to permit a trial to be prolonged longer than is necessary.

[12] The court is obliged to grant a separation unless it is of the view that the issues cannot be conveniently decided separately- see *Braaf v Fedgen Insurance Limited* 1995 (3) SA 938 (C). On the other hand where the issues are inextricably linked a separation should not be ordered- see *Denel*, supra.

[13] The view expressed by Mr Roux on behalf of the defendant is that the symptoms which the plaintiff displayed are not suggestive of manganism. Mr Van Staden on behalf of the plaintiff suggested that even if the symptoms are not consistent with manganism they are not inconsistent therewith.

[14] The determination of whether the plaintiff was exposed to high levels of manganese dust is relevant to the determination of whether the plaintiff suffers from manganism or not. Mr Stockwell submitted that it is irrelevant as the defendant does not dispute that the plaintiff was exposed to such dust. The issue would be determined on whether the plaintiff complied with the safety measure in place, despite the exposure to such dust, by wearing proper masks at all times prescribed.

[15] Mr Mullin's submitted by way of an analogy that if the issue was separated on the basis as suggested by the defendants, then it would be similar to a Norwegian doctor who examined a patient for malaria making a finding that he has malaria without enquired from the patient whether he/she travelled to a malaria infected area.



He therefore submitted that to separate the issue as suggested by the defendant without permitting the plaintiff to investigate the levels of dust particles would be tantamount to narrowing the issues which are intertwined.

[16] Having heard both sides and their arguments, I am inclined to agree with the view submitted by the plaintiff that the separation should take place on the basis suggested by them.

### **Costs**

[17] On behalf of the plaintiff it was suggested that costs should be ordered on a punitive scale, however, during argument this view seemed to have simmered. The applicant sought costs, on the normal scale, such costs to include the costs of two counsel. It is argued that the defendant should not have opposed the application as the separation sought was standard in these matters.

[18] Mr Stockwell raised the point that on the applicant's own admission the issue before court was relatively straight forward issue, and therefore it did not necessitate the use of two counsel.

[19] I do not believe that the opposition in this matter was motivated by an ulterior motive or stratagem to frustrate the proceedings. If any anything, it was motivated by the respondent wanting the matter to be completed in the shortest possible period. The separation route which the respondent choose to follow was directly linked to the curtailing of the trial to the shortest period, albeit that the respondent was being overly optimistic that the issue could be resolved by the sole determination of whether the applicant has maganism.



[20] In the circumstances I make the following order:

In terms of the draft handed in to the court marked "X" [attached hereto] with the exception of prayer 2. of the draft which is substituted with following order:-

1. The defendant to pay the costs of the Rule 33(4) application such costs to be restricted to the costs of one counsel, namely that of senior counsel.

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**ISMAIL J**



**Appearances:**For the Applicant :

Adv. Mullins SC assisted by Adv Du Plessis  
instructed by Savage Jooste and Adams Inc.,  
Pretoria

For the Defendant :

Adv. R Stockwell SC instructed by Friedland  
Hart Solomon & Nicholson, Pretoria.

Date of Hearing :

1 December 2014

Date of Judgment:

12 December 2014



(X)      JAC

**IN THE HIGH COURT OF SOUTH AFRICA  
(GAUTENG DIVISION, PRETORIA)**

**CASE NO: 47454/2007**

**In the matter between:**

**PRETORIUS, CORNELIUS JACOBUS**

**Plaintiff**

**and**

**MANGANESE METAL COMPANY (PTY) LTD**

**Defendant**

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**DRAFT ORDER**

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Having heard the parties, it is hereby ordered as follows:

1. It is ordered in terms of Rule 33(4) that:

1.1 As between the Plaintiff and the Defendant, the question of liability is separated out from the other issues in the matter;

1.2 Liability, as referred to in paragraph 1.1 above, is encompassed as follows in the pleadings as between the Plaintiff and the Defendant:

1.2.1 The allegations contained in paragraphs 1 to and including 5 of the Particulars of Claim (excepting therefrom the



questions of the permanence or otherwise, and the consequences of, manganism as referred to in paragraph 4.2 of the Particulars of Claim, should it be found that the Plaintiff contracted manganism), read together with paragraphs 1 to 6 of the Defendant's Plea;

1.2.2 The allegations contained in paragraphs 1 to 6 of the Plaintiff's Replication; and

1.2.3 The allegations contained in the Defendant's Conditional Counterclaim, read together with the Plaintiff's Plea thereto.

1.3 The matter will proceed to trial on the above separated-out issue of liability, with the question of whether the Plaintiff has suffered damage and, if so, the quantification thereof, being stayed until liability has been disposed of.

2. The Defendant is to pay the costs of the Rule 33(4) application, including those occasioned by the employment of two counsel.

**BY ORDER**

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**REGISTRAR**