

THE HIGH COURT OF SOUTH AFRICA

GAUTENG DIVISION, PRETORIA



CASE NUMBER: 45176/2015

DATE OF HEARING: 10 OCTOBER 2016

DATE OF JUDGMENT: 14 OCTOBER 2016

In the matter between:

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

14-10-2016
DATE

[Signature]
SIGNATURE

ICT GLOBE MANAGEMENT (PTY) LTD

Applicant

and

MCT TELECOMMUNICATIONS (PTY) LTD

Respondent

CORAM: Avvakoumides AJ

J U D G M E N T

AVVAKOUMIDES, AJ

- [1] This is an application for the upliftment of a notice in terms of rule 26 of the Uniform rules of court. The respondent (plaintiff) issued summons against the applicant (defendant). Certain documents were annexed to the summons as annexures, which are the same annexures forming part of the respondent's complaint against the application on the basis that these were not legible and some were not attached.
- [2] After the summary judgment application, when leave was granted to defend, the respondent filed a notice to amend its pleadings. Such amendment was objected to. The respondent brought an application in terms of rule 28 (4). The applicant did not oppose the application despite having objected to the proposed amendment. The order sought to amend the pleadings was granted and the respondent filed the amended pages. The applicant alleges that the amended pages were delivered late and as such the amendment lapsed. The respondent on the other hand adopted the stance that the amended pages were in time and as such the applicant had to file its plea.
- [3] Having not filed a plea and having relied upon its rule 35 (12) notice calling for the inspection of certain document, which are the same as the documents attached to the summons and ventilated at the summary judgment stage, the respondent filed a notice in terms of rule 26 calling upon the applicant to file its plea. The *dies* in terms of the rule 26 notice expired and the parties' attorneys each contending that they were right in interpreting the legal position *vis a vis* the amendment being effected immediately by the court or not, and the days within which the amendment pages were filed.

[4] In the process various notices in terms of rule 30 and rule 30A were filed leading up to this application. Ms Schoeman who appeared for the respondent submitted that the amended pages were not late because the court order had the effect of effecting the amendment sought immediately. Mr Van Vuuren for the applicant submitted, quite correctly with reference to rule 28 (6), that the sub-rule is clear that the court merely authorizes an amendment and that the amendment only takes effect when the steps prescribed in rule 28 (7) have been taken within the applicable time limits. This is of course unless the court orders the amendment to take effect immediately.

[5] Neither Ms Schoeman, nor Mr Van Vuuren, was able to show me the court order in respect of the amendment. Having considered the papers filed herein and having considered the submissions made by counsel I am of the view that logic must prevail in order to get the litigation on its way. In order to achieve this result I am of the view that the appropriate order herein would be to uplift the notice in terms of rule 26 and to simultaneously order the inspection of the documents sought by the respondent within a period of time followed by the filing of the plea.

[6] In the premises I make the following order:

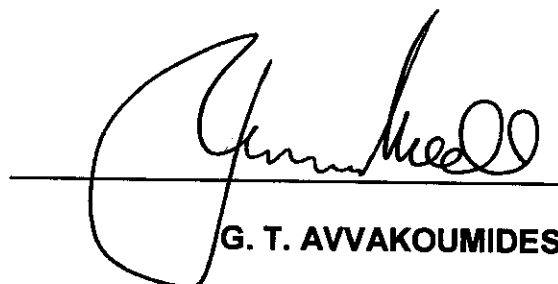
[6.1] The notice in terms of rule 26 dated 16 February 2016 is hereby uplifted.

[6.2] The respondent is ordered to make available all the documents listed in the applicant's notice in terms of rule 35 (12) dated 3 February 2016

within 10 days of this order and to the extent necessary to provide legible copies of such documents to the applicant.

[6.3] The applicant is ordered to file its plea within 10 days of inspecting or receiving, copies of the documents listed in paragraph 6.2, as the case may be.

[6.4] The costs of this application shall be costs in the cause.

A handwritten signature in black ink, appearing to read 'G. T. Avvakoumides', is written over a horizontal line. The signature is stylized with large, sweeping loops.

G. T. AVVAKOUMIDES
ACTING JUDGE OF THE HIGH COURT

GAUTENG DIVISION, PRETORIA

DATE: 14 OCTOBER 2016

Representation for Applicant:

Counsel: S. M. Van Vuuren

Instructed by: Van Zyl's Attorneys

Representation for the Respondent:

Counsel: A. J. Schoeman

Instructed by: Roestoff & Kruse