



IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA

CASE NO: 11239/2006

Before His Lordship Mr Acting Justice Davis

Date heard: 13 September 2016

Judgment delivered: 23 September 2016

In the matter between:

VISHNU MUNILALL AND ASSOCIATES

Applicant

and

DELETE WHICHEVER IS NOT APPLICABLE	
(1)	REPORTABLE: YES /NO
(2)	OF INTEREST TO OTHERS JUDGES: YES /NO
(3)	REVISED <input checked="" type="checkbox"/>
23/09/2016	
DATE	SIGNATURE

25/10/2016

MINISTER OF JUSTICE

First Respondent

STATE TENDER BOARD

Second Respondent

DIRECTOR-GENERAL NATIONAL TREASURY

Third Respondent

DEPUTY CHIEF STATE LAW ADVISOR:

DEPARTMENT OF JUSTICE

Fourth Respondent

JUDGMENT

DAVIS, AJ:

- [1] This matter initially came before the court on the unopposed motion court roll of 9 September 2016. It then comprised of 563 pages spread over 9 volumes. Upon a reading of the matter it soon became apparent that the

matter was opposed and appearance by Mr Maritz SC on behalf of the First, Third and Fourth Respondents confirmed this. As a result hereof and as a result of an application for striking out delivered by the said Respondents on that day, the matter stood down before me on this court's opposed motion court roll of 13 September 2016.

- [2] The Applicant is a sole proprietorship cited as a "*firm*" in the papers and was at all relevant times up to and including the matters before me represented by its owner Mr Munilall.

[3] **PROCEDURAL HISTORY:**

In order to contextualise the current disputes, it is necessary to briefly refer to the procedural history of the matter:

- 3.1 In 2006 the Applicant instituted action for damages against the Minister of Justice and the State Tender Board. It was alleged that the damages emanated from the alleged negligent rejection of tenders for transcription services for all high courts and labour courts throughout the Republic of South Africa.
- 3.2 An exception was raised against the Applicant's particulars of claim on the basis that negligence in adjudicating a tender does not give rise to a delictual claim and therefore that the particulars of claim did not disclose a cause of action.

- 3.3 The exception resulted in a number of amendments to the Applicant's particulars of claim and the present set of papers commences with amended particulars of claim dated 20 November 2012 wherein it is alleged that the Minister of Justice and/or the State Tender Board and/or their employees for whom they are vicariously liable assessed competing tenders dishonestly and/or in bad faith and/or fraudulently "... by *misrepresenting certain information to enhance the tender of a supplier who would be granted the contract, causing plaintiff to suffer damages for loss of potential profits in the amount of R92 million*".
- 3.4 In his plea, the Minister of Justice raised a special plea that the State Tender Board had been abolished and that the Applicant's new cause of action raised in its amended particulars of claim had become prescribed. A plea on the merits was also delivered.
- 3.5 Due to the fact that no plea was delivered on behalf of the State Tender Board as cited, the Applicant sought default judgment against it. The application for default judgment was refused and the Applicant unsuccessfully sought leave to appeal against the refusal of the default judgment from the court *a quo*, the Supreme Court of Appeal and the Constitutional Court.
- 3.6 Hereafter a number of other interlocutory applications followed.

[4] **CURRENT APPLICATIONS:**

After a debate with Mr Munilall, it appears that the current applications which he had set down and wished to have adjudicated are the following:

4.1 **The “constitutional application for declarations”:**

This is an application in which the Applicant seeks 11 declaratory orders. These range from a declaration that alleged directions issued by the Deputy President of this division on 4 December 2014 that the Applicant is entitled to enrol his matters on the unopposed court roll remain binding on parties to a declaration that Section 12(1) of the State Tender Board Act, 1968 “... *has been operational in various high courts and the Supreme Court of Appeal wherein numerous court orders in favour of or against the STB have been granted...*”.

4.2 **The first “provisional” application for leave to appeal:**

Together with the aforementioned application the Applicant delivered a “provisional” application for leave to appeal wherein he claimed leave to appeal in the event of the application for “constitutional declarations” being refused.

4.3 The supplementary application for declarations:

In a more recent application for declaratory orders (delivered on 17 June 2016) the Applicant claims that:

"... the following supplementary declaratory relief is applied for:

Declared

- (1) *That the State Tender Board Act No. 86 of 1968 was not repealed in 2005 as advised by the office of the Chief State Law Advisor*

Declared

- (2) *Therefore the State Tender Board (STB) which includes the Director-General of the Department of Finance as well as his/her employees and officials who have powers to sue and be sued and pay court orders under Section 12(1) did not cease to have these powers at any time*

Declared

- (3) *That the Applicant is therefore entitled to further relief based on these declarations as the next court hearing his final applications may deem to be appropriate."*

4.4 The Rule 30(2)(b) proceedings:

The current Third Respondent objected to the supplementary application for declarators as constituting an irregular proceeding. The grounds of objection were that the notice of motion was argumentative and did not comply with the provisions of Rule 6 of the

Uniform Rules and that the application purported to seek declaratory relief against the Treasury which is not a party in the trial action in which the Defendants are still only the Minister of Justice and the State Tender Board. The Third Respondent further claimed that the relief sought in the application for declaratory relief cannot be sought or granted piecemeal and that the issues raised therein should be addressed and decided upon in the trial action together with the adjudication of the First Respondent's special plea pertaining to the State Tender Board.

4.5 The Applicant's "counter notice" in terms of Rule 30(2)(b):

In this notice, supported by an affidavit, the Applicant objects to the Third Respondent's notice in terms of Rule 30(2)(b) as *inter alia* allegedly being constitutionally invalid and prohibited by Section 36(2) of the Constitution. The Third Respondent's notice is accused of being null and void *ab initio* and displaying an "*unlawful intention*".

4.6 The Applicant's application in terms of Rule 30(1):

In this application the Applicant formally applies for the setting aside of the Third Respondent's notice in terms of Rule 30(2)(b) as an irregular proceeding itself.

4.7 Application for rescission:

In this application the Applicant applies that the three declaratory orders sought in his "*supplementary application for constitutional declarations*" be used as the foundation to further declare that the court was allegedly fraudulently misled on a point of law and fact that the Second Respondent (the STB) had ceased to exist in 2005 and, based thereon the Applicant applies for the rescission of the refusal of his application for default judgment against the State Tender Board. In the affidavit supporting this application, the Applicant stated the following:

- "5. *Despite lacking locus standi, the STB duly instructed its attorneys to put up an affidavit after set down on the unopposed roll that later turns out to be an irregular proceeding and an act of perjury and fraud ...*
6. *At the hearing on 13 May 2013 the Second Respondent (STB) through its in-house instructing attorneys, the State Attorney and its counsel Adv Maritz SC used the act of perjury as a foundation to fraudulently mislead the court that STB had ceased to exist in 2005 before I issued summons.*
7. *The Honourable Court placed its trust in the State Attorney knowing better than I do and refused default judgment. It held that default judgment cannot be granted against a non-existing party...*

8. *There are no facts before court to even remotely suggest an innocent mistake has been made and it is not perjury and fraud.*
9. *Perjury and fraud therefore remain intentional acts that have misled the Honourable Court with the incorrect evidence and defrauded me of due relief."*

The Applicant also applies for condonation for the late delivery of this application for rescission.

4.8 "Provisional application for leave to appeal":

As at a previous instance, the Applicant had already delivered an application for leave to appeal, should the judgment on his abovementioned application go against him.

4.9 The application to strike out:

Not surprisingly, the Respondents (presumably only the First, Third and Fourth Respondents) applied that the Applicant's entire Rule 30 application to have the Respondents' Rule 30 notice struck out as an irregular step and the Applicant's "*notice of opposition*" filed on 8 September 2016 be struck out on the basis that both documents are vexatious and contain numerous "*baseless defamatory and malicious allegations of dishonesty and fraudulent conduct by the Respondents and their legal representatives. The insulting baseless criticism*

levelled at the Respondents' attorney of record and counsel are malicious, insufferable and vexatious in the extreme".

- [5] At the hearing of the application I enquired from Mr Munilall whether his "provisional" applications for leave to appeal are not premature and presumptuous. He thereupon withdrew these applications.
- [6] I have set out the procedural history and the nature of the current applications to be adjudicated upon in some detail to indicate, not only the interwovenness thereof but the fact that the existence (and/or the abolishment) of the State Tender Board is central or largely determinative of all the applications. Apart from the existence and provisions of the State Tender Board Act, No. 86 of 1968, this is a factual issue. The determination of this factual issue would also assist a court in determining the remainder of most of the relief claimed by the Applicant and will, apart from the procedural aspects, furnish a factual backdrop against which the issues of impropriety referred to in the application for striking out can be adjudicated.
- [7] During the debate which preceded the possible argument of the various applications, Mr Munilall indicated that he was not ready to proceed and that his constitutional rights and/or his *audi alterem partem* rights might be prejudiced if he is forced to proceed at this juncture. He therefore needed a postponement of the matter to which the First, Third and Fourth Respondents acquiesced on condition that the Applicant pays the costs.

- [8] To my mind a simple postponement of the matter would be impractical and would probably result in another judge having to wade through hundreds of pages and various interlocutory applications with the main factual issue as indicated above still remaining outstanding. This would not assist in the administration of justice or contribute to a finalisation of the matter.
- [9] The fact that the main action between the Applicant and the First Respondent is still pending, is also a factor which weigh heavily and which I considered in the formulation of the order which I propose to make. Insofar as costs are concerned I had proper regard to the issues described by me above and the nature of the Applicant's applications as well as the fact that it was the Applicant who had forced the First, Third and Fourth Respondents to brief counsel and attend to court and it is furthermore the Applicant who sought a postponement of the matter whilst the said Respondents were ready to argue the applications and proceed therewith. In the exercise of my discretion I deem it appropriate in the circumstances that the said Respondents should be recompensed for their expenses. I am fortified in this view by the fact that no reason could be gleaned from the papers nor was any furnished as to why the trial had not yet been set down for hearing and why the matter was allowed to limp along by way of interlocutory applications after the Applicant had been unsuccessful in his attempts to obtain default judgment and after various attempts to seek leave to appeal against such refusal were also unsuccessful.

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

10.1 The interlocutory applications delivered by the parties up to 13 September 2016 are postponed *sine die*.

10.2 The issue regarding the status and existence (or not) of the State Tender Board is referred for adjudication in the trial between the parties in the main action.

10.3 The Applicant is ordered to pay the costs of the hearing of the applications on 9 September 2016 and 13 September 2016.



N DAVIS
ACTING JUDGE OF THE HIGH COURT

Date of hearing:	13 September 2016
Judgment delivered:	23 September 2016
Applicant:	Mr Vishnu Munilall
On behalf of:	Vishnu Minilall & Associates c/o Pillay Thesigan Attorneys 742 WF Nkomo Street Proclamation Hill Pretoria West Pretoria

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