

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

5/8/16

CASE NO: **75966/2015**

Reportable: No

Of interest to other judges: No

Revised.

In the matter between:

MALULEKA RICHARD

APPLICANT

and

MASHABA SOLLY

1st RESPONDENT

ABSA BANK

2nd RESPONDENT

VULOMBE TRADING AND PROJECTS (PTY) LTD

3rd RESPONDENT

JUDGMENT

MALI J

[1] On 17 September 2015 the applicant herein sought an order against the respondents consisting of Parts A and B as follows:

"PART A

1. *Interdicting the first respondent from withdrawing money from **ABSA Bank Account Number [...], Branch Code [...], Savings Account.***
2. *That the memorandum between the Applicant and Respondent be terminated forthwith.*
3. *That the Respondent be restricted or interdicted from using the catering equipments, pending the finalisation of this matter.*

PART B

1. *That the Respondent be called upon to answer the Applicant's Application by the (08th day of October 2015) failing which the Honourable Court will be approached on the same paper or duly supplemented for a Final Order. The return date being the 30 th October 2015.*
4. *Payment of 50% profit made out of the R989 364-00*
5. *The catering equipment of the Vulombe Trading and Projects (sic) CC under registration number 20121107838107 be shared equally between the Applicant and the 1st Respondent.*
6. *Costs of this application.*
8. *Further and/ or alternative relief'.*

[2] The above order was granted on 17 September 2015, however on 18 December 2015 the order was set aside subsequent to its reconsideration. It was found that the application of 17 September was never served upon the respondents.

[3] The applicant is before this court based on the same notice of motion as above.

The first respondent who is a director of Vulombe Trading (PTY) LTD, the third respondent submits that the third respondent was never served with the application to join the third respondent, although the order was granted on 16 November 2015.

LAW

[4] Rule 6 (2) of the Uniform Rules of the Superior Court provides as follows:

"When relief is claimed against any person, or where it is necessary or proper to give any person notice of such application, the notice of motion shall be addressed to both the registrar and such person, otherwise it shall be addressed to the registrar only:

[5] The relief is also sought against the third respondent because the monies which are the subject of dispute are held in the third respondent's bank account. The said bank account is held with the second respondent, Absa bank. The first respondent is the signatory thereto.

[6] It is common cause that the third respondent is a juristic person with capacity to be sued and sue on its own. It has not been given opportunity to answer the case alleged by the applicant. The applicant submits that the third respondent was served with the application, however produces no proof to that effect. From the papers before court there is no proof that the third respondent was served with the application to join it to the proceedings. What appears on the papers is the notice of set down of the application for hearing on 25 January 2016. The said application is served to Molefe Attorneys as the first and third respondents attorneys.

[7] The first respondent submits that Molefe Attorneys represents the first applicant only. Be that as it may the service is not related to the joinder of the third respondents even though cited in the papers on 25 January 2016. There is no notice or nomination of Molefe Attorneys as the third respondent's attorney. The applicant downplays the requirement of service to the third respondents. In this regard the applicant states that the first respondent is the sole director of the

third respondent therefore the service to the first respondent should suffice and be regarded as the service to the third respondent.

[8] As indicated above the rules are clear that application must be served to the interested parties. The mere existence of the application does not accomplish any purpose if it is not served. Furthermore it appears that the applicant's manner of litigation disregards the requirement of service as seen from the initial application of 17 September 2015.

[9] Having regard to the above the *point in limine* must succeed.

[10] In the result the *point in limine* is upheld.

[11] I therefore make the following order;

11.1. The application is dismissed with costs.

N.P. MALI

JUDGE OF THE HIGH COURT

Counsel for the Applicant:	Mr NDUNA (ATTORNEY)
Counsel for the 1 st Respondent:	Mr MOLEFE (ATTORNEY)
Date of hearing:	18 April 2016
Date of Judgment:	5 August 2016