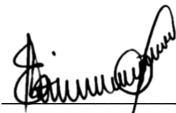




**N THE HIGH COURT OF SOUTH AFRICA
(GAUTENG DIVISION: PRETORIA)**

Case number: 90569/2019
90565/2019

In the matter between:-

(1)	REPORTABLE: NO
(2)	OF INTEREST TO OTHER JUDGES: NO
(3)	REVISED: NO
07 November 2022 	

DEPARTMENT OF WATER & SANITATION

APPLICANT

AND

THE KLERKSDORP IRRIGATION BOARD

RESPONDENT

JUDGMENT

KHWINANA AJ

INTRODUCTION

[1] This is an application for rescission in terms of Rule 31(2) (b) alternatively Rule 42(1)(a) of the Uniform Rules and common law in relation to cases number :90569/2019 and 90565/201 with costs.

- [2] The respondent is applying for dismissal of the application on the basis for a point *in limine* being misjoinder and that the notice of motion at refers to one case number which is different from the founding affidavit. The respondent also challenges the requirements to have the orders rescinded.

POINT IN LIMINE

- [3] The respondent raised a point in lime that the applicant applies for partial rescission under case number 90569/2019 of two orders whereas the respondents were Ekwilibri Landgoed CC being first respondent, Minister of Water and Sanitation the second respondent, Director General Department of Water and Sanitation the third respondent and the Regional Director Free State: Department of Water and Sanitation the fourth respondent.
- [4] The applicant further states that under case number 90565/2019 the respondent were Johannes Antonie Potgieter the first respondent, the Minister of Water and Sanitation the second respondent, the Director General Department of water and Sanitation the third respondent and the Regional Director Free State: Department of water and Sanitation the fourth respondent.
- [5] The respondent states that rescission of the orders under the two case numbers referred to supra will have a direct and substantial interest on the first respondents that is Ekwilibri Landgoed CC and Johannes Antonie Potgieter. The respondents submits that neither of the first respondents under the above mentioned case numbers have been joined in the application.

BACKGROUND

- [6] The respondents obtained a court order under case number 90569/2019 particularly prayer 1 wherein the Ekwilibri Landgoed Cc was compelled to refrain from abstracting more than 35 569m of water on portion 7 of the farm Almore 173 Registration Division Ip. In relation to prayer 2,3.4 and 5 sought

against the second, third and fourth respondents the court found in favour of the respondents in the main application.

LEGAL MATRIX

- [7] The test is direct and substantial interest for joinder of any party¹. In *SA Riding for the Disabled Association v Regional Land Claims Commissioner* the Constitutional Court held that in a case where the applicants base their claims to intervene on a direct and substantial interest in the subject matter of the dispute, the court has no discretion it must allow them to intervene because it should not proceed in the absence of parties having such legally recognized interests².
- [8] In the matter of *Knoesen & Ano*³ the court held Harms dealt with the law in detail and with reference to case law. I align myself with the findings.
- “a) If a party has a direct and substantial interest in any order the court might make in proceedings, or if such order cannot be sustained or carried into effect without prejudicing that party, he is a necessary party and should be joined in the proceedings unless the court is satisfied that he has waived his right to be joined.
- b) The mere fact that a party may have an interest in the outcome of the litigation does not warrant a non-joinder objection.
- c) The term "direct and substantial interest" means an interest in the right, which is the subject-matter of the litigation, and not merely an indirect financial interest in the litigation.
- d) An academic interest is not sufficient. On the other hand, the joinder of joint wrongdoers as defendants is not necessary, although advisable.

¹ *Shapiro v South African recording Rights Association Ltd* 2008(4) SA 145 (W) at 152F-153B

² 2017(5) SA 1 (CC) at 5C-D approving *Nelson Mandela Metropolitan Municipality v Greyvenouw* 2004 (2) SA 81 (SE) at 898B-C

³ *Knoesen and Another v Huijink-Maritz and Others* (5001/2018) [2019] ZAFSHC 92 (31 May 2019)

e) Likewise, if parties have a liability, which is joint and several, the plaintiff is not obliged to join them as co-defendants in the same action but is entitled to choose his target.

f) A mere interest is also insufficient. A litigation funder may be directly liable for costs and may be joined as a co-litigant in the funded litigation. This would be the case where the funder exercises a level of control over the litigation or stands to benefit from the litigation.”

[9] In the matter of Knoesen and Ano⁴ the court held that “the adjudication, in fact and law, to turn on:

a) Direct and substantial interest and legal interest,

b) in the subject matter of the action and litigation”,

c) which may cause the second defendant to be affected prejudicially by the judgement of the court.

ANALYSIS

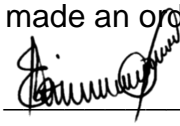
[10] In *casu* the applicant in bringing this application for rescission of judgment decided to leave out certain parties that were involved the both matter. This are parties that have a direct and substantial interest regard being had to the fact that a judgment was granted in their favour. It is therefore imperative that when the application for rescission of judgment is brought in a matter where their names appear that they are cited.

[11] The applicant in this matter has filed heads of argument however same does not deal with this aspect of misjoinder. The applicant concentrated on the rules regarding rescission of judgment. The applicant is concerned about certain parts of the judgment and it was prudent upon the applicant to serve all parties in this matters.

[12] I am inclined to agree with the respondent’s attorney that the applicant in failing to join all the respondents the application for rescission must fail.

⁴ [2019] ZAFSHC 92 (31 May 2019)

In resultant I dismiss the application with costs. I have considered the draft order filed which is marked X and made an order of court.



ENB KHWINANA

**ACTING JUDGE OF NORTH
GAUTENG HIGH COURT, PRETORIA**

APPEARANCES:

Counsel for the Applicant

Adv M POMPO

Instructed by

State Attorney

Counsel for Respondent:

Adv JHA SAUNDERS

Instructed by:

Barnard & Patel Inc. Attorneys

Date of Hearing

05th September 2022

Date of Judgment

07th November 2022