



IN THE HIGH COURT OF SOUTH AFRICA  
(LIMPOPO DIVISION, POLOKWANE)

(1)	REPORTABLE: YES/NO
(2)	OF INTEREST TO THE JUDGES: YES/NO
(3)	REVISED.
DATE 25/10/2016	

CASE NO: REV 59/2016

**DAVID SCHALK JANSE VAN RENSBURG N.O**  
(In his capacity as a Trustee of the  
Dawie Van Rensburg Family Trust IT: 3504/1997)

FIRST APPLICANT

**CYNTHIA RAE JANSE VAN RENSBURG N.O**  
(In her capacity as a Trustee of the Dawie Van  
Rensburg Family Trust IT: 3504/1997)

SECOND APPLICANT

and

**THE ADDITIONAL MAGISTRATE, TZANEEN**

FIRST RESPONDENT

**PHETOLE FREDDY RAMOLETA**

SECOND RESPONDENT

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JUDGMENT

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IN THE HIGH COURT OF SOUTH AFRICA  
(LIMPOPO DIVISION, POLOKWANE)

**CASE NO: REV 29/2016**

In the matter between:

**DAVID SCHALK JANSE VAN RENSBURG N.O**  
(In his capacity as a Trustee of the  
Dawie Van Rensburg Family Trust IT: 3504/1997)

**FIRST APPLICANT**

**CYNTHIA RAE JANSE VAN RENSBURG N.O**  
(In her capacity as a Trustee of the Dawie Van  
Rensburg Family Trust IT: 3504/1997)

**SECOND APPLICANT**

and

**THE ADDITIONAL MAGISTRATE, TZANEEN**

**FIRST RESPONDENT**

**PHETOLE FREDDY RAMOLETA**

**SECOND RESPONDENT**

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**JUDGMENT**

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**CHIDI AJ****INTRODUCTION**

- [1] This is an application to review and set aside the decision of the Magistrate Tzaneen, the First Respondent, which decision was made on 09 December 2015 upholding the exception of the Second Respondent.
- [2]. The First Respondent is not opposing this application and has filed the Notice to Abide. The application is only opposed by the Second Respondent. The Second Respondent was the Defendant (excipient) in the matter before the Magistrate's Court, Tzaneen.

**COMMON CAUSE ISSUES**

- [3]. The Applicants issued summons against the Second Respondent in the Magistrate Court Tzaneen for payment in the sum of R99 206-16 being the outstanding balance of the purchase price. The Second Respondent entered appearance to defend and filed a notice of exception raising the following exceptions:
- (a). *It is unclear from the particulars of claim as to the basis upon which this Honourable Court has jurisdiction to entertain this matter as required in terms of the rules of this court;*

- (b). *It is unclear whether the Defendant has complied with the provisions of the Section 7 of the Alienation of Land Act as required in terms of Rule 5(7) and if so, how was the notice sent to the Defendant;*
- (c). *It is unclear whether the Plaintiff has performed in terms of the agreement or not, and if so, how;*
- (d). *It is unclear as to which specific provision of the agreement the Defendant is in breach of the agreement and to what extent is the Defendant in breach;*
- (e). *It is unclear in terms of the attached agreement why, how, when and by whom was the first valid initial agreement which has not been attached to the particulars of claim, cancelled;*
- (f). *It is unclear as to be documentary proof under which the Plaintiff's claim is based;*
- (g). *The summons were served to the Defendant without a case number and were not signed by clerk of the civil Court.*

[4]. The exception was set down for hearing on 2 September 2015 and the decision was made by written judgment on 09 December 2015. The decision of the Magistrate was to the effect, in part, that:

*"I agree with the argument by the excipient that this court has no jurisdiction as the agreement annexed to the particulars of claim is sold for an amount beyond the jurisdiction of the court. The Defendant will be prejudiced in pleading to the numerical figure*

*without the material terms to which those figures were found. Therefore the particulars are vague and embarrassing and are struck out”(sic).*

### **ISSUES IN DISPUTE**

- [5]. The Applicants brought this application in terms of Rule 53 read with Section 22(1)(c) of the Superior Courts Act,<sup>1</sup> ( herein after referred to as the Act) on the basis that the Magistrate failed to apply her mind to the minimal requirements for an exception, consequently she did not adjudicate on the matter fairly and properly.
- [6]. The Second Respondent is avers that this application is not proper before this Court as the Applicants should have appealed the decision of the Magistrate and not taken it on review. Counsel for the Second Respondent concedes that the Magistrate committed an error of law but that that is an issue of appeal. Counsel for the Second Respondent submits further that there is no compliance with Section 22(1) (c) of the Act which requires a mention of the ground of review being gross irregularity in the founding affidavit.

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<sup>1</sup>. Act 10 of 2013.



### GROSS IRREGULARITY

- [7]. In **ERASMUS SUPERIOR COURT PRACTICE**<sup>2</sup> defines gross irregularity of civil proceedings as:

*“ An irregularity or omission by the presiding judicial officer or (possibly some other official of the court) in respect of the proceedings of so gross a nature that it was calculated to prejudice the aggrieved litigants, on proof of which the court would set aside such proceedings unless it was satisfied that the litigant had in fact not suffered any prejudice”.*

- [8]. The application before the Magistrate was for an exception that the summons is vague and embarrassing. The issue then is what is vague and embarrassing about the summons. A statement is vague and embarrassing when it is either meaningless or capable of more than one meaning or can be read in any one of a number of ways. The reader is unable to select from the statement a clear and, single meaning.<sup>3</sup>

- [9]. In my view the summons of the Applicants is very much clear as to what the cause of action is and how the sum claimed is computed and arrived at. The claim was for the outstanding balance on the purchase price.

<sup>2</sup>Van Loggerenberg DE “ERASMUS SUPERIOR COURT PRACTICE” 2ed (Juta) 2016, A2-134.

<sup>3</sup> Venter and Others NNO v Barritt. Venter and Others NNO v Wolfsberg Arch Investments 2(Pty) Ltd 2008(4) SA 639 (CPD) at para 11.

- [10]. The Magistrate granted the exception on the ground that the Magistrate's Court does not have jurisdiction as the property was sold for the amount beyond the jurisdiction of the Magistrate's Court. However, the cause of action before her was not for the value of the property but for the outstanding balance which is the sum of R99 206-16. The jurisdictional amount in the Magistrate Court is R200 000-00 at present; it follows that the claim of the Applicants falls within the jurisdiction of the Magistrate Court. On this finding alone she made an error of law.
- [11]. The Magistrate went further in her judgment and stated that the particulars of claim is vague and embarrassing and are struck out. The application before her was not for striking out certain parts of the particulars of claim but for exception in terms of Rule 19(1).
- [12]. The Court in *Nelson Mandela Bay v Nobumba NO*<sup>4</sup> stated that:

*"It is argued by the municipality that the Magistrate's decision amounts to a gross irregularity in the proceedings, in that he misinterpreted the NCA and thereby committed a material error of law. The making by a magistrate of a material error of law may be a 'gross irregularity in the proceedings' in terms of Section 24(1)(c) of the Supreme Court Act<sup>5</sup>. The Magistrate's reasoning seems to amount to the assertion that, because the*

<sup>4</sup>2010(1) SA 579(ECG), 584 paras 8-9

<sup>5</sup>Act 59 of 1959, as amended.

*majority of debtors in the Port Elizabeth Magistrate's Court are indebted to the municipality for services rendered by it, it would be a travesty of justice if they were not protected by the NCA, and it should therefore be interpreted to include them."*

[13]. In my view the findings of the Magistrate in this case by upholding the exception on the reasons as she did leads to a travesty of justice as the Applicants would be left with no particulars of claim as it was struck out.

[14]. Consequently, the decision of the Magistrate falls to be reviewed and set aside as it amounted to gross irregularity.

### **COSTS**

[15]. The First Respondent is not opposing this application. It is trite that costs are usually awarded against judicial officers where it has been shown that their actions were *mala fide*<sup>6</sup>. In this application it has not been shown that the Magistrate acted in bad faith. Even though she has just copied the Second Respondent's heads of argument and incorporated same into her judgment that cannot be interpreted to mean that she was *mala fide*; all what she did was failure to apply her mind to the issues before her.

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<sup>6</sup> Magistrate Pangaker v Botha 2015(1) SA 503(SCA), 513 para 39.



- [16]. However, presiding officers in the lower courts should be cautious when adjudicating civil matters as in some cases costs may be awarded against them if it can be found that they acted in an inexcusable manner.
- [17]. The Second Respondent opposed this application even though the grounds for such opposition were untenable. The Second Respondent chose to ride a tiger unarmed and the consequences are obvious. Therefore costs should be awarded only against the Second Respondent.
- [18]. In the premises, I make the following order:

**ORDER**

1. The decision of the First Respondent on 09 December 2015 upholding the exception is hereby set aside and replaced with the following order:-  
**"The exception is dismissed with costs".**
2. This application for review is granted with costs against the Second Respondent.



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**M.P CHIDI AJ**  
**ACTING JUDGE OF THE HIGH**  
**COURT OF SOUTH AFRICA**  
**LIMPOPO DIVISION, POLOKWANE**

**REPRESENTATIVES**

1. Applicant's Counsel : Adv. J Horak  
Instructed by : Pratt Luyt & De Lange
2. Second Respondent's Counsel : Sebola K.A  
Instructed by : Maloka Attorneys
3. Date Heard : 24 October 2016
4. Date Delivered : 25 October 2016