

REPUBLIC OF SOUTH AFRICA



IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG LOCAL DIVISION, JOHANNESBURG

CASE NO: 2012/22733

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

.....
DATE

.....
SIGNATURE

In the matter between:

IRVIN PERUMAL

First Applicant

SHIRLEY PERUMAL

Second Applicant

KERSHIA PERUMAL

Third Applicant

And

DUNNEWELS BODY CORPORATE

First Respondent

GERRIT GENIS

Second Respondent

LAILA SARANG

Third Respondent

SANNETTE ERASMUS

Fourth Respondent

JANINE TARGETT

Fifth Respondent

OLIETE PERESTRELO

Sixth Respondent

VHUMBANAI PROPERTY SOLUTIONS

Seventh Respondent

JUDGMENT (RESCISSION OF SPILG J'S ORDER – 28 JUNE 2012)

MAKUME, J:

[1] This is an application for an order as put by the applicants to rescind a so-called new order and reinstate the original order.

[2] If I grant the order as prayed for by the applicants it will result in absolving the second and third applicants from the costs order granted against them and leave only the first applicant as the party liable to pay the taxed bill of costs.

[3] The original order was granted by Spilg J on the 28th June 2012. Paragraph 4 of that order reads as follows:

“4. *The Applicant is to pay the costs of the First, Fourth, Fifth, Sixth and Seventh Respondents on an unopposed scale.*”

[4] The respondent taxed a bill of costs against all three applicants in the sum of about R28 000 on the 30th October 2012 and thereafter proceeded to issue a writ of execution which led to the attachment and removal of the second applicant's motor vehicle.

[5] The first applicant then sought to rectify the court order as it is his argument that the costs order only relates to him and not the other applicants.

[6] On the 28th February 2013 Spilg J clarified the ambiguity on his original court order as a result paragraph 4 was amended to read as follows:

“The First, Second and Third Applicants are to pay the costs of the First, Fourth, Fifth, Sixth and Seventh Respondents on an unopposed scale.”

[7] This application is directed at amending paragraph 4 to read that only the first applicant is liable for the costs.

[8] I agree with respondents that the applicant ought to have brought this application within a reasonable time after having obtained knowledge of the complaint in accordance with Rule 42. This he did not do.

[9] In the matter of *First National Bank Limited v Van Rensburg NO and Others* 1994 (1) SA 677 TPD the Full Bench held that if it is in the interest of justice that there should be relative certainty and finality as soon as possible concerning the scope and effect of orders of the court. Persons affected by such orders should be entitled within a reasonable time after the issue thereof to know that the last word has been spoken on the subject.

[10] The power created by Rule 42(1) is discretionary and it would be a proper exercise of that discretion to say that even if the appellant proved that

Rule 42(1) applied it should not be heard to complain after the lapse of a reasonable time.

[11] In the present matter the applicant was present in court on the 28th June 2012 when the original court order was granted and was present when it was clarified on the 28th February 2013 by Spilg J and yet he waited for five months before bringing this application.

[12] Having said this I refrain from pursuing this aspect any further because the application must fail on another ground.

[13] In a number of cases dealing with the provisions of Rule 42(1)(b) (an ambiguity or patent error or omission) the Appellate Division in upholding the general principles that once a court has duly pronounced a final judgment or order it has itself no authority to correct, alter or supplement it. Then the court proceeded in the matter of *Firestone SA (Pty) Ltd v Gentiruco AG* 1977 (4) SA 298 (A) at 306-7 to recognise a number of exceptions namely:

13.1 The court may clarify its judgment or order if on proper interpretation the meaning thereof remains obscure, ambiguous or otherwise uncertain, so as to give effect to its true intention, provided it does not thereby alter the sense and substance of the judgment or order.

13.2 The court may correct a clerical or other error in its judgment or order so as to give effect to its true intention. This exception is confined to the mere correction of an error in expressing the judgment or order. It does not extend to altering its intended sense or substance.

[14] In the present matter at the instance of the applicant and the respondent the presiding Spilg J by including second and third applicants in paragraph 4 of his order was in fact not effecting any alteration but did a correction in order to give his order its true meaning.

[15] The three applicants withdrew their application against the respondents. It is procedure that all three pay the costs unless otherwise absolved by agreement. In using the word applicant in paragraph 4 Spilg J did not refer to first applicant only he used the word applicant to refer to all three applicants hence in his correction he brought about that meaning.

[16] I remain unpersuaded that this application has any merit and accordingly I make the following order:

16.1 The application for rescission is dismissed.

16.2 The court order handed down by Spilg J as amended is hereby confirmed as correct.

16.3 The applicant is ordered to pay the costs of this application.

M A MAKUME
JUDGE OF THE HIGH COURT OF SOUTH AFRICA
GAUTENG LOCAL DIVISION, JOHANNESBURG

APPLICANT:	IN PERSON 21 DUNNEWELS COMPLEX 7 MAIDEN STREET ROBINDALE RANDBURG
RESPONDENT:	ADV G STEYN
INSTRUCTED BY:	BICCARI,BOLLO&MARIANO ATTORNEYS Tel: (011) 628-9300 Fax: (011)788-1736 Ref: M Hinz/rv/RD1873
DATE OF HEARING:	3 RD MARCH 2014
DATE OF JUDGMENT:	25 TH MARCH 2014