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**IN THE HIGH COURT OF SOUTH AFRICA
(GAUTENG DIVISION, JOHANNESBURG)
REPUBLIC OF SOUTH AFRICA**

CASE NO: 13078/2021

NOT REPORTABLE

NOT OF INTEREST TO OTHER JUDGES

NOT REVISED

06/09/23

In the matter between:

MUTSHINYA BUSINESS ENTERPRISES CC

Registration Number: [...]

Applicant

And

TSEBO HOLDINGS (PTY) LTD

Registration Number: [...]

Respondent

JUDMENT

SENYATSI J

- [1] This is an application for amendment of the pleadings by the applicant who is the plaintiff in the main action. The application is opposed by the respondent on various grounds that will become apparent as set out below. For convenience's sake, the parties will be referred to as in the main action.
- [2] The plaintiff issued summons against the defendant for relief sort in terms of the particulars of claim. The defendant was cited as Tsebo Holdings (Pty) Ltd Registration Number: 2016/224394/07. It attached to its summons, annexure "H2" which is a Supplier Agreement concluded between it and Tsebo Solutions Group Proprietary Limited Registration Number : 2016/224394/07.
- [3] After being served with the summons, the defendant raised a special plea of misjoinder on the grounds that the agreement was not concluded with the defendant. The plaintiff brought an application to amend the misnomer to reflect the correct entity. The mistake arises in referencing the defendant as "Tsebo Holdings (Pty) Ltd" instead of "Tsebo Solutions Group (Pty) Ltd."

[4] The defendant objected to the amendment on the basis, firstly, that it amounts to substitution of the party being sued without withdrawing the action and tendering the costs. Secondly, that because Tsebo Holdings Group (Pty) Ltd is not a party the proceedings, it cannot be joined by way of amendment of the pleading.

[5] The legal principles governing applications for amendment of pleadings are trite. The principles have been summarised in *Commercial Union Assurance Co Ltd v Waymark*¹ to be the following:-

(a) The court seized with the amendment application has a discretion to grant or refuse an amendment;

(b) An amendment cannot be granted for the mere asking; some explanation must be offered therefor;

(c) The applicant must show that *prima facie* the amendment has something deserving of consideration, a triable issue;

(d) the modern tendency lies in favour of an amendment if such facilitates the proper ventilation of the disputes between the parties;

(e) The party seeking in the amendment must not be *mala fide*;

(f) The amendment must not cause an injustice to the other side which cannot be compensated by costs; and

¹ 1995 (2) SA 73 (Tk) at 77F-I

(g) the amendment should not be refused simply to punish the applicant for neglect.

[6] These principles have now crystallised into a coherent legal system and have been widely accepted and applied by both the High Court in the Labour Court, is the proper approach to adjudicating applications for amendment of pleadings.²

[6] As stated the general rule is that amendments will always be allowed unless the amendment is *mala fide* or unless the amendment will cause an injustice to the other party which cannot be cured by an appropriate costs order or unless the parties cannot be put back for the purposes of justice in the same position as they were when the pleading which is thought to be amended was filed.³ It is also trite that the Court is generally inclined to grant an application to amend pleadings to ensure a proper ventilation of the dispute between the parties.

[7] On the face of the summons it is common course that the registration number of the cited defendant is the same as the registration number attached to the summons as annexure “H2”. In my view, no prejudice can be suffered by correcting a clear misnomer. This is not bringing a new

² Four Towers Investment (Pty) Ltd v Andre ‘s Motors 2005(3) SA 39(N) at 43G-H

³ Affordable Medicines Trust v Minister of Health 2006 (3) SA 247 (CC) at 261C-D.

party to the proceedings as contended by the defendant. It will not be in the interest of justice therefore to expect of the plaintiff to withdraw the proceedings as no prejudice will be suffered by the other party. The agreement was concluded with Tsebo Solutions Group. The misnomer thereof by the plaintiff under the circumstance, is permissible to be amended without the need to withdraw the action as contended by the defendant because there is no doubt about the registration number of the defendant as set out above. The contention by the defendant is evidently, semantic, misplaced and does not serve the interest of justice and fairness to the litigants.

- [8] Accordingly, leave to effect the amendment as proposed must be granted.

ORDER

- [9] The order is made in the following terms:-

- (a) Leave is granted to amend the face of the summons by removing the wording “Tsebo Holdings (Pty) Ltd” and replacing it with “Tsebo Solutions Group Pty Ltd”.
- (b) Leave is granted in the first paragraph of the summons, by removing the wording “Tsebo holdings (Pty) Ltd” and replacing it with “Tsebo Solutions Group Pty limited”.

- (c) The defendant is ordered to pay the costs of the application including counsel's fees.

ML SENYATSI
JUDGE OF THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, JOHANNESBURG

Delivered: This Judgment was handed down electronically by circulation to the parties/ their legal representatives by email and by uploading to the electronic file on Case Lines. The date for hand-down is deemed to be ... September 2023.

APPEARANCES

For the Applicants: Mr EM Netshipise

Instructed by: Mudau and Netshipise Attorneys

For the Respondent: Adv. L Siyo

Instructed by: Cliffe Dekker Hofmeyer Inc

Date of Hearing: 29 May 2023

Date of Judgment: 6 September 2023