



IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA

CASE NO: 25502/2022

(1) REPORTABLE: NO
(2) OF INTEREST TO OTHER JUDGES: NO
(3) REVISED: YES
Date: 7 February 2023

In the matter between:

BRET TOMAS LANG

APPLICANT/RESPONDENT

and

STOPFORTH FLORIS JOHANNES WILHELMUS

RESPONDENT/EXCIPIENT

JUDGMENT

ALLY AJ

[1] On 10 May 2022, the Respondent in these exception proceedings issued out a Notice of Motion together with his founding affidavit against the Excipient claiming certain relief.

[2] For purposes of this judgement, I do not deem it necessary to set out the relief claimed.

[3] On 16 May 2022 the Excipient/Respondent filed a notice to oppose and on the same date, instead of filing an opposing affidavit, chose to file a notice of exception and set out in such notice, the relief it was claiming.

[4] Essentially, the notice of exception raised the point that the Notice of Motion did not disclose a cause of action and on that ground, the application should be dismissed.

[5] At the hearing of the exception, the Excipient was represented by Counsel, Adv. T. Jacobs, and the Respondent was represented himself.

[6] I proceeded to ask Counsel and Mr Lang to address me on the effect of the judgement of Schippers J¹ wherein the question arose whether a party may bring an exception in application proceedings. As the parties had not read the judgement, I allowed the parties to submit supplementary Heads of Argument dealing with this specific point.

¹ WP Fresh Distributors Pty Ltd v Klaaste NO & Others 2013 WCHC

[7] Both parties filed supplementary Heads of Argument and I am indebted to Mr Lang and Counsel for the Excipient, for same.

[8] The gist of the argument for the Excipient is that this Court should not take an inflexible approach and should be reminded of the principle that the rules are there for the court and not the court for the rules. This has become a well acceptable principle but this principle cannot take the place of procedures that need to be adhered to in dealing with applications, in my view. An Applicant is entitled to hear a case put up by a Respondent and is entitled to respond to such opposition. This procedure, contrary to the submissions of Counsel for the Excipient, does not prevent a Respondent from raising points *in limine* regarding the papers of the Applicant.

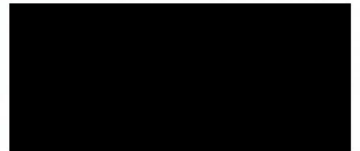
[9] Having read the judgement of Schippers J, which is persuasive authority in this context, I am of the view that the decision in that case is correct and I align myself with that judgement.

[10] The Excipient in this case is not without relief as, whilst a Court is entitled to dismiss the exception on the grounds stated above, this Court, in the interests of justice will allow the Excipient to file opposing papers within a certain time period.

[11] There is no reason why the norm should not pertain when it comes to the question of costs. The successful party is entitled to their costs and accordingly the Respondent in these exception proceedings is entitled to his costs where such costs have been incurred, taking into account that the Respondent represents himself.

[12] Having found that the Excipient has used the wrong procedure in opposing the Applicant's case, the following Order shall issue:

- a). The Exception is dismissed;
- b). The Excipient is to pay the costs of this exception where such costs have been incurred;
- c). The Excipient/Respondent is to file their answering affidavit within 10 [ten] days of this judgement.



GAREP

ACTING JUDGE OF THE HIGH COURT

GAUTENG DIVISION OF THE HIGH COURT, PRETORIA

Electronically submitted therefore unsigned

Delivered: This judgement was prepared and authored by the Judge whose name is reflected and is handed down electronically by circulation to the Parties/their legal

representatives by email and by uploading it to the electronic file of this matter on CaseLines. The date for hand-down is deemed to be **7 February 2023**.

Date of virtual hearing: 26 October 2022

Date of judgment: 7 February 2023

Appearances:

Attorneys for the Applicant/Respondent: **In person**

langbret@gmail.com

Attorneys for the Respondent: **FJW STOPFORTH**

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Counsel for the Respondent: **Adv. T. Jacobs**