



12

IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, JOHANNESBURG

Case number: 2021/43681

- [1] REPORTABLE: NO
[2] OF INTEREST TO OTHER JUDGES: NO
[3] REVISED: NO

SIGNATURE

DATE: 20 FEBRUARY 2024

In the matter between:

SHAYNAZ PRITHILAL

Applicant / Plaintiff

and

AKANI EGOLI (PTY) LTD

First Respondent / Defendant

TSOGO SUN GAMING LIMITED

Second Respondent / Defendant

Summary:

Joinder – Joinder of Party unknown at time of instituting action

Prescription – Joinder of Party against whom claim has possibly prescribed

JUDGMENT

Z KHAN AJ

INTRODUCTION

- [1] This is an application for the joinder of the First Respondent to certain proceedings initially instituted on 10 September 2021 against the Second Respondent. The Applicants claim arises from a slip and fall incident alleged to have occurred on 29 September 2018 at the Gold Reef City Casino.
- [2] In the Second Defendants Plea dated 15 December 2021, the Second Defendant pleaded that the operator and proprietor of the casino is the First Respondent and that the Applicant had sued the incorrect party. The Applicant thereafter launched the current application to join the First Respondent. The application is one brought in terms of Uniform Rule 10(3) of the Rules of the High Court.
- [3] The Applicant says that despite her attempts to contact the casino and obtain information from the casino, she was unable to ascertain who owned the

property on which the casino operates. Her investigations revealed that the Second Respondent held approximately 120 local subsidiaries and the public records of the Second Respondent were similarly unclear as to who bore the responsibility for the property on which the incident is alleged to have occurred.

[4] The First Respondents opposition to the matter is that no proceedings have been instituted against the First Respondent by way of summons and the pleadings as they stand, do not indicate any cause of action against the First Respondent by way of a proposed amended particulars of claim. More crucially, First Respondent says that any claim that Applicant would have had against the First Respondent has since prescribed.

[5] The identity of the First Respondent only emerged from the Second Defendants plea, incidentally delivered some 3 years after the date of the incident, in December 2021 and the Applicant then launched this application for joinder some 14 months later in February 2023. It is unclear as to what Applicant was doing for 14 months to ascertain details relating to the First Respondent.

Leave this for the trial court to determine

[6] First Respondent says that the ownership of the property is a matter of public knowledge and a relatively simply Deeds Search would have revealed the details of the First Respondent. It is also alleged that prescription starts running from, *inter alia*, when the creditor has knowledge of the identity of the debtor or could have acquired such knowledge by the exercise of reasonable care.¹

¹ Section 12(3) of the Prescription Act 68 of 1969

- [7] First Respondent would have this court, on application, determine when the Applicant reasonably became aware of the identity of the First Respondent. Applicant sets out a number of exercises and activities undertaken to ascertain the identity of the party responsible for the property. First Respondent says that a simple electronic search of the official records relating to the immovable property would have made such revelation. A Windeed search merely reveals ownership but not responsibility. It might very well have been an instance of a private contract giving rise to liability on a third party. I simply cannot make such a determination of what reasonable care has been or ought to have been adopted by the Applicant to ascertain the identity of the First Respondent.
- [8] First Respondent also talks to a Promotion of Access to Information notice on the casinos website and other details that emerge from the Second Respondents website.
- [9] The Respondent refers to the matter of *Leketi*² as support for its assertion that this claim has prescribed. That matter is distinguishable for the very reason that I set out above. The court made its determination at the stage of the special plea being determined when evidence could be placed before the court. The First Respondent also drew support in the matter of *MacLeod* which again deals with the issue of prescription at the trial stage when evidence can be lead.³

² *Leketi v Tladi NO and Others* [2010] 3 All SA 519 (SCA)

³ *Macleod v Kweyiya* 2013 (6) SA 1 (SCA)

- [10] What is common cause is that the name of the First Respondent emerges in the Second Respondents plea. I may then use this date as a common cause date to speculate as to when the latest date for prescription arose. In this regard, Tshiqi JA pointed out⁴ that the service of an application for joinder does not constitute a process and therefore does not interrupt prescription⁵. A joinder proceeding does not dispose of any issue between the parties. In this matter, the joinder application is being entertained within the three year period from the date of the Second Respondents plea and the First Respondent would be fully entitled to argue its prescription point before the trial court.
- [11] I cannot and do not wish to hazard speculation of what the Applicant could or reasonably did to ascertain the First Respondents details. In any event, this legal point relating to prescription is not to be finally decided in this application for joinder, where I am limited to the papers before me. The prescription point is better suited for the trial court to determine.
- [12] As regards the remaining point that the Applicant has not placed a draft amended plea before this court to consider as part of the joinder application, I am not swayed by such an argument. The Applicant has succinctly set out a cause of action in delict arising from a fall. The joinder of the relevant parties will invite the necessary amendments and objections thereto. It is not for this court to interrogate a draft amendment to decide if the Applicant will, may,

⁴ Peter Taylor & Assoc v Bell Ests (Pty) Ltd 2014 (2) SA 312 (SCA)

⁵ In contrast see: Waverley Blankets Ltd v Shoprite Checkers (Pty) Ltd 2002 (4) SA 166 (C)

could, or should have a cause of action against a party if they are, will, may, could, should be joined as a party to litigation.

[13] I then turn to the remaining opposition that the Applicant ought to have issued a summons against the First Respondent and the Applicant has adopted the incorrect procedure in terms of the Uniform Rules of Court by attempting to introduce the First Respondent into the proceedings by way of joinder. The 'proceedings' commencing the litigation against the First Respondent would be the amended summons, if any, once served.⁶

[14] I do not make any finding on the reasonable steps that the applicant says they have taken. That is for the trial court.

[15] In the result the following order is made:

1. The First Respondent is joined as the Second Defendant;
2. The applicant shall pay the First Respondent costs of this application on an attorney and client scale.

⁶ Naidoo v Lane 1997 (2) SA 913 (D)



Z KHAN

ACTING JUDGE OF THE HIGH COURT
GAUTENG DIVISION, JOHANNESBURG

This judgment was handed down electronically by circulation to the parties' and/or parties' representatives by email and by being uploaded to Caseline. The date and time for hand-down is deemed to as reflected on the Caseline computer system.

DATE OF HEARING: 20 FEBRUARY 2024

DELIVERED: 20 FEBRUARY 2024

APPEARANCES:

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L BEDHESI

ATTORNEY FOR THE APPLICANT:

**MOODLIYAR & BEDHESI
ATTORNEYS**

COUNSEL FOR THE RESPONDENT:

MTA COSTA

ATTORNEY FOR THE RESPONDENTS:

COX YEATS ATTORNEYS