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THE HIGH COURT OF SOUTH AFRICA
FREE STATE PROVINCIAL DIVISION

Reportable: yes/no
Circulate to other Judges: yes/no
Circulate to Magistrates: yes/no
Case Number 4962/2019

In the matter between:

LITSOANE GERMINA LITSOANE

Applicant

and

ROAD ACCIDENT FUND

1st Respondent

DLABANTU AND ASSOCIATES INCORPORATED

2nd Respondent

In re:

LITSOANE GERMINA LITSOANE

Plaintiff

and

ROAD ACCIDENT FUND

Defendant

CORAM: BERRY, AJ

HEARD ON: 23 March 2023

DELIVERED ON: 12 SEPTEMBER 2023

JUDGEMENT BY: BERRY, AJ

JUDGMENT

[1] This is an Application to vary a Court Order granted on 10 November 2022 in terms of Rule 42(1)(b).

[2] The Court Order made a settlement Agreement between the Applicant and the 1st Respondent and Order of Court.

[3] The Application to make the settlement agreement was only served on the 1st Respondent and proceeded unopposed.

[4] The Applicant was involved in a vehicle accident and lodged a claim against the 1st Respondent.

[5] She appointed Motaung Attorneys to represent her.

[6] The matter was settled on 10 March 2022 in that an offer of settlement was made and accepted.

[7] The settlement was not made an order of Court at the time.

[8] Mr Dlabantu was employed as Professional Assistant by Motaung Attorneys.

[9] Mr Tando Ongama Dlabantu represented Motaung Attorneys at all material times in his capacity as an employee of Motaung Attorneys.

[10] The settlement agreement nominated the banking details of Motaung Attorneys into which the 1st Respondent had to pay the settlement amount.

[11] Mr Dlabantu left the employ of Motaung Attorneys on 05 October 2022 to start his own firm, cited in this Application as the 2nd Respondent.

[12] His resignation occurred after the settlement was reached, but prior to payment.

[13] The Applicant was contacted by Mr Dlabantu on 25 October 2022 and requested a consultation at the premises of the 2nd Respondent.

[14] Mr Dlabantu, as sole director of the 2nd Respondent, requested the Applicant to sign a new power of attorney appointing the 2nd Respondent as her attorney as well as a new contingency fee agreement.

[15] Mr Dlabantu was still in the employ of Motaung Attorneys when the settlement agreement was signed.

[16] Following the appointment of the 2nd Respondent as Attorney of record, the Applicant, represented by the 2nd Respondent brought an Application to make the settlement agreement an Order of Court.

[17] The Court Order of 10 November 2022 reads as follows:

“1 The settlement recorded in the offer, Annexure “FA1” to the Founding Affidavit is made an Order of Court.”

[18] The settlement agreement attached to the Application to make it an Order of Court, referred to as ANNEXURE “FA1” stipulated the banking details of Motaung Attorneys as the bank into which payment had to be made.

[19] Order 2.6 of the 10 November 2022 Court Order however nominate the banking details of the 2nd Respondent into which payment must be made.

[20] This banking detail differs from the banking detail captured in the settlement agreement.

[21] It is this anomaly the Applicant wishes to rectify as she is liable for the contingency fees and expenses owed to Motaung Attorneys, which facilitated the settlement and finalisation of the matter before Mr Dlabantu left the employ of Motaung Attorneys.

[22] The Applicant contacted Motaung Attorneys to enquire about the status of the 2nd Respondent after the 2nd Respondent provided her with a copy of the Order dated 10 November 2022.

[23] She appointed Motaung Attorneys to bring this Application on 28 November 2022.

[24] The 2nd Respondent opposes the Application to amend the Order.

[25] The 2nd Respondent raised two points *in limine*, dealing with the non-joinder of him in his personal capacity as well as the non-joinder of Motaung Attorneys.

[26] Motaung represents the Applicant in this Application.

[27] The 2nd Respondent's contention is that Mr Dlabantu is implicated in his professional capacity as an attorney and therefore he should be afforded the opportunity to respond in his personal capacity.

[28] The 2nd Respondent further contents that there is not an obvious error in the Court Order.

ANALYSIS

[29] The Order differs from the settlement agreement.

[30] There is no Application to amend the settlement agreement.

[31] Rule 42(1)(b) provides that an Order may be amended where there is a patent error in the Order.

[32] The Order does not reflect the correct banking details provided for in the settlement agreement.

[33] The *in limine* arguments are in my opinion no more than red herrings as it does not affect the fact that the Court Order reflects the incorrect banking details.

[34] I deliberately limit this judgment to the question whether the Order reflects the correct banking details contained in the settlement agreement and whether this error is a patent error as provided for in Rule 42(1)(b).

[35] I find that there is an obvious error in the Court Order of 10 November 2022 in that it does not reflect the correct banking details provided in the settlement agreement.

ORDER

[36] The following Order is made.

1. Order 2.6 of the Order granted on 10 November 2022, Case Number 4962/2019 is amended to read as follows:

2.6 The 1st Respondent is ordered to pay the sum plus interest into the following account:

MOTAUNG ATTORNEYS TRUST

FIRST NATIONAL BANK

ACCOUNT NUMBER: 622[...]

BRANCH NAME: PRELLER

BRANCH CODE: 230139

REF NUMBER: LIT22/0001

E-MAIL PROOF: I[...]@motaungattorneys.co.za

2. The 2nd Respondent is ordered to pay the costs of this Application.

AP BERRY, AJ

APPEARANCES:

For the Applicant: Motaung Attorneys
BLOEMFONTEIN

For the Defendant: Adv. T Mpahlwa
Instructed by: DLABANTU AND ASSOCIATES INC
BLOEMFONTEIN