

IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA

Before His Lordship Mr Justice Labuschagne AJ on 10 April 2024

Case No: 72144/2018

In the matter between:

MPHO RACHEL POOE

Applicant

and

STANLEY TIYANI MACHEKE

Respondent

URGENT APPLICATION HEARD ON 10 APRIL 2024: JUDGMENT

[1] The applicant and respondent have been embroiled in litigation since 2018. A judgment was delivered by Modau J on 8 November 2023 in which Mudau J found that a commercial and property partnership existed between the applicant and the respondent.

[2] Paragraphs 2 and 3 of the order read as follows:

“2. *It is declared that the plaintiff has an undivided half share in the partnership and the assets listed in paragraph 3.18.3 off the particulars of claim and the further assets, as may be identified , and which were acquired from the income and profits earned from the businesses and properties of the partnership;*

3. *It is declared that the partnership between the parties is terminated with effect from the date hereof.”*

[3] The remainder of the order deals with the appointment of a liquidator if they cannot agree on the net benefit accruing to the plaintiff from the partnership and the manner and date of delivery of such benefit to the plaintiff.

[4] The respondent filed a notice of leave to appeal against the judgment of Mudau J on 29 November 2023. That judgment is consequently suspended.

[5] On 28 December 2023 the applicant approached the urgent court for relief precluding the respondent from accessing bank accounts. That application failed.

[6] An urgent application again served before Potterill J on 26 March 2024. She directed the parties to expedite the application for leave to appeal and granted an order against the respondent restraining him from disposing of assets, pending finalisation of the application for leave to appeal.

[7] On 9 April 2024 the applicant again brought an urgent application in the urgent court, in which she sought the following relief on the basis of urgency:

“2. *That the respondent shall declare monthly profit of both companies, namely, Exodec 286, duly registered with enterprise number B[...] and Macs Engineers, duly registered with enterprise number K[...].*

3. *That the monthly profits shall be shared equally between the parties.*

4. *That the respondent is ordered to pay the costs of the application on attorney and own client scale.”*

[8] The respondent contends that the two companies referred to are essential parties who have not been joined to these proceedings. The respondent therefore raises a special plea of non-joinder.

- [9] The order that the applicant seeks relates to the monthly profits of the two companies, the determination of an equal share between the applicant and the respondent and payment of such profits by the companies to its shareholders. The relief consequently directly affects the interests of the two companies, and they should have been joined as parties. The special plea is well taken.
- [10] Further, the relief sought presupposes an effective order that the applicant is entitled to 50% of such profits. Such a claim flows from the order of Mudau J, but that order is suspended. The applicant can therefore not establish a right to the relief whilst that order is still suspended. This is not a section 18(3) application in terms of the Superior Courts Act 10 of 2013, for the putting into operation of the Mudau J order pending leave to appeal or finalisation of any appeal.
- [11] On 8 April 2024 the attorneys for the respondent wrote a letter to Mudau J, requesting dates for the hearing of the application for leave to appeal. I am advised that certain dates have been proposed and that the application for leave to appeal will be heard in the near future.
- [12] The respondent has sought a special cost order against the applicant. This is the third application in the urgent court since 28 December 2023. I am tempted to accede to the request for a punitive cost order. However, the applicant contends that she is destitute, that the whole family lived off the profits of Exodec 286, that the respondent had paid the municipal account and the cost of utilities of their jointly owned home in the past but has now ceased doing so. The applicant contends that the municipality has cut off her electricity due to arrears and contends that the respondent has ceased sharing the profits of the company with her. I have to take into account that at least one judge has found in favour of the applicant and her entitlement to 50% of the joint estate. The fact that she has repeatedly approached the urgent court may very well be a manifestation of desperation, rather than vexatiousness.

[13] In the premises I am not inclined to grant a punitive costs order.

[14] I therefore make the following order:

1. The application is dismissed with costs.

LABUSCHAGNE, AJ