



**IN THE HIGH COURT OF SOUTH AFRICA
(EASTERN CAPE DIVISION, MAKHANDA)**

Case No: 295/2021

In the matter between:

MAZIYA GENERAL SERVICES CC

Plaintiff / Applicant

And

THE MINISTER OF PUBLIC WORKS N.O. First Defendant / Respondent

**TSHIYA INFRASTRUCTURE DEVELOPMENT
(PTY) LIMITED**

Second Defendant / Respondent

JUDGMENT – APPLICATION FOR LEAVE TO APPEAL

BESHE J:

[1] In my judgment delivered on the 23 June 2022, I issued an order upholding first defendant's exception. It was my considered view that plaintiff having failed to plead the basis upon which it can enforce rights stemming from a contract that was concluded between it and the second defendant being a joint venture on the one hand and the first defendant on the other, plaintiff's particulars of claim were excepiable by reason of being vague and embarrassing.

[2] This is an appeal against my judgment and order in the abovementioned regard on the basis that I should have found that plaintiff's claim was not excepiable. It was submitted that having acknowledged the existence of the legal principle that in the case of co-creditors the entitlement is presumed to be

joint rather than joint and several and that as such the co-creditor is entitled to his proportionate share and entitled to claim his proportionate share independently. Furthermore, that I should have found that plaintiff's particulars of claim were not excepiable. In support of this submission it was pointed out that the joint venture agreement did not give rise to the existence of a separate legal entity. And that therefore the plaintiff and the second defendant were two separate parties contracting with the first defendant in terms of a joint venture. It being a term of the joint venture agreement that revenue of the project would be divided at a ratio of 60% to the plaintiff and 40% to the second defendant. That this therefore gave plaintiff the standing to claim his pro rata share against the first defendant.

[3] It will be borne in mind that plaintiff's claim stems from plaintiff *inter alia* disputing the notice of cancellation of the contract between first defendant and the joint venture and later accepting repudiation of the contract.

[4] At both the hearing of the application itself and the application for leave to appeal, reliance was placed on the matter of ***The Director General of the Department of Public Works and Kovac Investments 298 (Pty) Ltd*** In re ***Kovac Investments 298 (Pty) Ltd*** and ***The Director General of Public Works***.¹ Similarly in that matter, an exception had been raised concerning the non-joinder of the other party to a joint venture. Having heard regard to decided cases and other authorities, the court in that matter concluded that: It is clear that in the absence of contractual provisions to the contrary, a joint lessor has a claim against the lessee for his pro-rata share of rent received (or due). The court found that plaintiff in that case was not precluded from claiming from the defendant, rent due by it in terms of the lease (albeit that the claim is limited to its pro-rata share).

¹ Case Number 3823/09 dated 11 August 2010, a judgment of the North West Gauteng High Court.

[5] The application is opposed on the premise that there are no reasonable prospects that another court will find that plaintiff could act unilaterally to enforce rights flowing from agreement entered into with a joint venture without being authorised to do so as required or as provided for also under *Clause 7* of the joint venture agreement. This clause deals with a project committee. The project committee seems to be concerned with activities pertaining to the responsibilities and obligations of the parties for purposes of finalising the project.

[6] *Section 17 (1) (a) (i)* of the *Superior Courts Act*² provides that leave to appeal may only be granted where the judge concerned is of the opinion that the appeal would have a reasonable prospect of success. I am unable to find that there are no reasonable prospects of the appeal succeeded on the grounds raised by the applicant as aforementioned.

[7] Accordingly, applicant is granted leave to appeal to the Full Bench of this division. Costs to be costs in the appeal.

N G BESHE
JUDGE OF THE HIGH COURT

² Act 10 of 2013.

APPEARANCES

For the Applicant / Plaintiff	:	Adv: G Brown
Instructed by	:	VAN DER BILT ATTORNEYS C/o WHEELDON RUSHMERE & COLE INC. 119 High Street MAKHANDA Ref: M van der Veen/Michelle/S23694 Tel.: 046 – 622 7005
For the 1 st Respondent / Defendant	:	Adv: J J Nepgen
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Date Heard	:	8 November 2022
Date Reserved	:	8 November 2022
Date Delivered	:	2 December 2022