

REPUBLIC OF SOUTH AFRICA



IN THE HIGH COURT OF SOUTH AFRICA
(GAUTENG DIVISION, PRETORIA)

CASE NUMBER: A343/2017

1) REPORTABLE: YES (NO)
2) OF INTEREST TO OTHER JUDGES: YES (NO)
3) REVISED. <i>l</i>
<i>[Signature]</i> SIGNATURE
<i>7-8-19</i> DATE

In the matter between:

MOLONYANE EVA NOVEMBER

1st Appellant

(1st Plaintiff in Court *a quo*)

NOZILILO GLORIA NOVEMBER

2nd Appellant

(2nd Plaintiff in Court *a*

***quo*)**

and

MULLER & PARTNERS

Respondent

quo)

JUDGMENT

WRIGHT J

1. On 13 November 2002 Mr Zilindile November was, it is alleged, driving a tractor on a public road in the Free State when the tractor collided with another vehicle. Mr November was killed. His wife and three daughters are said to have suffered loss of support as a result of his death. The Fund, after the institution of the action relevant to this appeal and on 10 February 2016 settled the claims of the two younger daughters. The claims of Ms Moloinyana November, the widow of Mr November and that of Ms Nozililo November, the elder daughter remain the subject of dispute, the cause of action being against Muller and Partners, the present respondent.
2. In the action forming the subject of this appeal, Ms Moloinyana November sued as first plaintiff and her elder daughter, Ms Nozililo November sued as second plaintiff. The Fund was cited as first defendant and attorneys Muller and Partners were cited as second defendant.
3. The cause of action against the Fund was based at least partly on the alleged negligent driving of the driver of the vehicle not driven by Mr November and on the consequent alleged loss of support suffered by the plaintiffs, namely Ms November senior and her daughters.

4. The Fund was alleged to be liable for the claims of the two younger daughters and it is these claims which have been settled by the Fund.
5. The particulars of claim allege that Muller and Partners were engaged by the appellants to prosecute the claims and that they negligently allowed the claims of the appellants namely Ms November and her elder daughter to prescribe.
6. Muller and Partners raised a special plea of lack of jurisdiction, pleading that the cause of action did not arise within the jurisdiction of this court. The action was instituted in the High Court, Gauteng Division, Tshwane, being where the Fund resides. The collision occurred in the Free State and Muller and Partners practice in the Free State.
7. In the cause of action against Muller and Partners, the appellants will need to prove the alleged dependants' action they would have needed to prove against the Fund and in addition, the mandate, or continuing mandate to Muller and Partners and their alleged negligence in not prosecuting the claims timeously if in fact the claims were not prosecuted timeously.
8. The plea of lack of jurisdiction came before Baqwa J. The matter appears to have been argued on the common cause facts set out above and no evidence was led. The learned judge upheld the plea but granted leave to appeal to the present appellants, Ms Moloinyane November and her elder daughter to a Full Court of this Division.
9. When the action was instituted, three plaintiffs were cited. Firstly, Ms Moloinyane November, who sued in her personal capacity (this claim being against Muller and Partners) and as guardian and legal representative of her youngest daughter (this claim being against the Fund). The second and third plaintiffs were cited as adult daughters of Mr November with their own claims against the Fund.

10. Summons was issued on 17 September 2010. It was served on the Fund, in Tshwane on 20 September 2010 and on Muller and Partners, in Welkom on 27 September 2010.
11. The Superior Courts Act 10 of 2013 came into operation on 23 August 2013. It repealed the Supreme Court Act 59 of 1959. Under section 19(1) of the repealed Act " *A provincial or local division shall have jurisdiction in and over all persons residing or being in and all causes arising and all offences triable within its area of jurisdiction and in all other matters of which it may according to law take cognizance ...*" The new Act repeats this provision in section 21(1). Under section 52(1) of the new Act, "*Subject to section 27, proceedings pending in any court at the commencement of this Act must be continued and concluded as if this Act had not been passed*". I read this latter provision, not as one stultifying the law on jurisdiction as at 23 August 2013 but rather as one allowing actions begun prior to the commencement of the new Act to continue without interruption. That said, and applying section 19(1) of the old Act, subject to one important observation, I am of the view that the appeal must succeed.
12. It was in my view, sensible to bring all claims in one action. This choice limited the number of trials to one rather than two, it allows the witnesses who would testify regarding the claim as it would have been against the Fund to testify once rather than twice and it limits legal costs and valuable judicial time and court officials' time to one rather than two trials. One trial rather than two does away with the undesirable possibility of conflicting judgments on the questions of negligent driving and quantum of loss. Court efficiency in deciding disputes is an important part of modern litigation.
13. It may be that the present action could have been instituted in the Free State with the court there having jurisdiction over the Fund at least for the same reason now sought by Ms November and

her elder daughter for the Gauteng Division to have jurisdiction over Muller and Partners. In my view, it matters not which course was adopted by the Novembers. At the end of the day, the efficient determination of the matter is an important consideration.

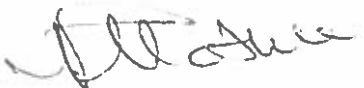
14. In my view to decline jurisdiction over Muller and Partners would be to follow too narrow a reading of section 19(1) of the old Act when a slightly wider reading gives better effect to the section particularly with reference to the significant strides forward our law has taken since 1959.
15. The observation to which I referred above is that under section 173 of the Constitution the court has the power to develop the common law in the interests of justice. See **Ngxuza v Permanent Secretary, Dept of Welfare, Eastern Cape 2001(2) SA 609 E** at 626 H-629 C.
16. Under Uniform Rule 10(3), different defendants may be joined where the determination of the disputes depends substantially on the same questions of law or fact.
17. The judgment of Fourie J in **Dlamini v RAF** on 21 May 2019 under case number 7658/08 in this division is support for my conclusion.
18. The Fund settled the claims of the younger daughters well after the present action had been instituted. Accordingly, despite the fact that the Fund is now out of the picture this court had jurisdiction over Muller and Partners when the action was instituted and it continues to have this jurisdiction.
19. In the result the following order is made.

ORDER

1. The appeal is upheld with costs, including those of senior counsel.
2. The order upholding the plea of lack jurisdiction, and its costs order are set aside and replaced with an order reading "*The plea of lack of jurisdiction is dismissed with costs including the wasted costs of 10 February 2016 and 16 August 2016.*"



WRIGHT J



MOTHLE J

I agree



LOUW J

I agree

APPEARANCES

For the Appellants: Adv J O Williams SC

For the Respondent: No appearance

Date of hearing: 7 August 2019

Date of judgment: 7 August 2019