

IN THE HIGH COURT OF SOUTH AFRICA

GAUTENG DIVISION

13/01/2017
Case Number 70839/15

In the matter of

MABRON FARMING ENTERPRISES (PTY) LTD

Applicant

And

HANO TRADING CC

First Respondent

BOTHA MASSYN & THOBEYANE ATTORNEYS

Second Respondent

LERUMA EMMANUEL THOBEYANE

Third Respondent

THE SHERIFF OF CENTURION

Fourth Respondent

JUDGMENT

BAM J

1. The applicant lodged two applications, for: (a) The clarification of an order made by this court in case number 3632/2013; and (b) the setting aside of a writ of execution in case number 70839/2015 issued by the respondents against the applicant. The applications are opposed.
2. On 30 September 2013 case number 3632/13 was argued before me and on 7 October 2013 I delivered my judgment. The order I made in that case gave rise to this application. The dispute between the parties concerns the interpretation of the order. On their interpretation First and Third Respondents issued a writ of execution against the applicant after the latter had failed to pay the costs it was allegedly ordered to do in terms of the said judgement.

3. In my view the issuance of the writ was invalid. Apparently it was based on a mis-interpretation, or mis-understanding, of the order I have made. I did not intend to, and did not make any costs order against the applicant at all.
4. The relevant aspects in case number 3632/13 were the following:
- (i) On 29 January 2013 the provisional liquidation of *HANO TRADING CC* was granted. The matter was eventually enrolled before this court for the purposes to confirm or dismiss the Rule Nisi.

(ii) The parties were cited as follows:

MATOME SIMON SEBYEDANE	First Applicant
KGOMOTSO TRYPHINAH MAPHOSO NO	Second Applicant

And

HANO TRADING CC	First Respondent
JAMES MALOSE SEMOKA	Second Respondent
LERUMA EMMANUAL THOBOJANE	Third Respondent

(Second and third respondents were intervening creditors in terms of a court order dated 29 January 2013.)

(iii) At the hearing of the application the present applicant, "*MABRON FARMING*", represented by Mr Badenhorst SC and Mr Schoeman, applied to intervene as creditor. (The application was already filed on 1 March 2013.) Although the intervention application was initially opposed by the respondents, represented by Mr Sullivan SC and Mr Young, this dispute between these parties became settled and the parties agreed that *MABRON FARMING*, should be granted leave to intervene as an applicant in the liquidation.

(iv) On 26 March 2013 the first applicant had already filed a Notice of Withdrawal after having settled his dispute with the Third Respondent (*THOBOYANE*.) This issue concerned the counterclaim by the second and third respondents about the payment of R183 697 32 to the first applicant.

(v) The application for the confirmation of the Rule Nisi, brought by the second applicant, represented by Ms Groenewald, was opposed.

(vii) The legal representatives of *MABRON FARMING* and the Respondents then prepared two draft orders.

The first draft order, "X", envisaged the situation that in the event the final liquidation of *HANO TRADING CC* were to be dismissed, it provided that in that event *HANO TRADING CC* should pay to *MABRON FARMING* the amount of R183 697 32 as well as the costs. (A copy of "X" is attached.)

(viii) The second draft order, "Z", concerned the intervention of *MABRON FARMING* as intervening creditor. (A copy of "Z" is attached.)

5. After having heard argument, I concluded that the provisional order for the liquidation of *HANO TRADING CC* should be dismissed with costs.
6. However, *MABRON FARMING*, had become a party in its capacity as intervening creditor, as agreed upon and reflected in "X". Accordingly I deemed it necessary, and expedient, to make the order granting *MABRON FARMING* leave to intervene as an applicant in the main application.
7. On behalf of the applicant it was submitted that that order should not have been made. The respondents contended during argument that the order granting the applicant the right to intervene was indeed correctly made by the court. This submission was sound, as alluded to above, in that as from that point in time the applicant became a party to the proceedings.
8. In view thereof that no liquidation proceedings would have followed or realised, the question of costs in respect of the proposed liquidation, from that point onwards, fell by the way. I therefore made the order as recorded in my judgement solely for the purpose of incorporating *MABRON FARMING* as a party as reflected in "Z". That was the only reason why "Z" formed part of the order. It was never intended to hold the applicant liable for any costs incurred before the order concerning the intervention was made.

9. The respondents' contention that the applicant was also liable for all the costs of the liquidation application before the intervention, is fallacious, and not substantiated.

10. What occurred thereafter is that the applicant's attorneys, after payment of the amount of R183 697 32 was made to the applicant by *HANO TRADING*, when the bill of costs came before the Taxing Master, the respondents' representative, third respondent, Mr THOBEYANE, an attorney, submitted that the applicant was liable to pay the costs of the first respondent, *HANO TRADING*, for the instituted liquidation proceedings, in accordance with the court order (A1), incorporating "Z".

11. As indicated above it was never intended that the applicant should be held liable for any costs at all, and that no order was made that *MABRON FARMING* was liable for any costs. It seems clear that the particular order was incorrectly interpreted.

12. The subsequent dispute about the costs and the issuance of the writ of execution against the applicant could have been avoided by the respondents, especially in view of the applicant's attitude in that regard, by simply asking for reasons for the relevant order.

13. When read in context it should be clear that the order I have made never intended the applicant to be mulcted in costs. However, in order to avoid any possible misunderstanding, I am prepared to concede that a variation of the order in terms of Rule 42, as requested by the applicant, is justified and called for.

14. In view of the above the respondents, *HANO TRADING CC* and *LERUMA EMMANUEL THOBOYANE* should pay the costs of both applications on the usual scale. I am not convinced that the third respondent, Mr Thoboyane, acted maliciously as contended by the applicant's attorney in rather unacceptable harsh and rude terms.

15. In these circumstances I am also not prepared to make an order that the matter should be reported to the Law Society as requested by the applicant.

16. ORDER

A. The order in respect of Part A in case number 3632/13 is varied as follows:

1. **Paragraph 1 of the draft order, marked "Z" in regards to the intervention of the intervening party is made an order of court. There is no order as to costs.**
2. The Rule Nisi is dismissed with costs, including the costs of senior and junior counsel. **(Excluding any costs incurred by the intervening creditor, MABRON FARMING ENTERPRISES (PTY) LTD.)**
3. The draft order concerning the payment of the R183 697 32 by the first respondent to the intervening creditor **MABRON FARMING ENTERPRISES (PTY)LTD, including costs of two counsel**, is confirmed.

B. The application for setting aside the writ of execution in case number 3632/13 against the applicant by the respondents succeeds. The writ is set aside.

C. First and third respondents are ordered to pay the costs of both applications, including the costs of two counsel.



A J BAM

JUDGE

9 January 2017