

CASE NO

8526/12

DATE

6 JUNE 2017

In the matter between

M J G JORDAAN

PLAINTIFF/APPLICANT

5 and

MARQUEE TENT AND TARPAULIN

DEFENDANT/RESPONDENT

JUDGMENT (ex tempore)

10 PILLAY J This is an application for an amendment. The matter should have been issued out of the appropriate lower court. I raised this issue with counsel. Counsel for the applicant in the amendment asked me to order that matter be transferred appropriately. In granting the order I give the following reasons:

15 First the institutional arrangements are such that our court system is divided into lower courts and higher courts. This is done for a very rational and reasonable basis. Until the rationality or reasonableness of this system is challenged it must apply. If it does not apply then institutions including the High Courts are likely to fail.

20 (Sabel C F and Simon W H 'Destabilization Rights: How Public Law Litigation Succeeds' (2003-2004) 117 *Harv. L. Rev* 1016 at 1052.)

Judges are told that one of the reasons for matters being raised in this court and not in the appropriate lower court having jurisdiction is because the lower courts do not function optimally or efficiently. If this allegation is true it is no reason to make this court
25 dysfunctional by imposing on it to do the work of other institutions.

There is even more need to make dysfunctional courts efficient by persisting in referring matters there to fix those courts instead of overburdening and compromising the High Court.

We also learn that some institutional creditors like banks
5 impose collection targets on their attorneys to qualify to be on their panels. Attorneys cannot meet these targets if they institute proceedings in the lower courts where matters allegedly take a long time to be finalised. The High Court cannot be used as tool to performance manage panel attorneys.

10 Second, why this matter should be transferred to the lower court is a question of access to justice. When a matter that should not be in this court is placed on our rolls and clogs up the High Court system it displaces another matter that should be in this and no other court. Therefore those persons are not having efficient and timely
15 access to justice.

Third, access to justice is implicated from another angle. The party who is summoned to appear in these courts willy-nilly instead of the lower court has to face a higher tariff for both party and party and attorney client costs. Hence the costs of litigation impair such persons'
20 access to justice from this perspective too. Bearing in mind that they are debtors who have defaulted it is unconscionable that creditors would mulct them with higher costs.

Fourth, if my judgment is challenged then it would have to serve before three judges either of this division or of the Supreme
25 Court of Appeal. If it had started in the appropriate lower court it would

come before two judges of this court. Therefore the cost of litigation even from the administration of justice point of view is escalated unnecessarily simply because the person starting up the litigation had for whatever reason, often self-interest, prosecuted its claim in the
5 wrong forum.

For these reasons I grant the application to transfer the matter to the appropriate lower court having jurisdiction. The plaintiff in the main action and the applicant in the application for amendment shall pay the wasted costs.

IN THE KWAZULU NATAL HIGH COURT, DURBAN
REPUBLIC OF SOUTH AFRICA

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BEFORE THE HONOURABLE MADAM JUSTICE PILLAY

ON BEHALF OF APPLICANT : ADVOCATE SNYMAN

ON BEHALF OF RESPONDENT : ADVOCATE R A SUHR

REPORT ON RECORDING

Clear recording.

CONTRACTOR

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