

IN THE HIGH COURT OF SOUTH AFRICA

EASTERN CAPE LOCAL DIVISION: MTHATHA

CASE NO: 1924/14

THOBILE NGCAME

Applicant

And

KSD MUNICIPALITY

1st Respondent

SITHEMBISO MADELA

2nd Respondent

ECO CAR HIRE CC

3rd Respondent

JUDGMENT

BROOKS AJ

[1] This is an interlocutory application brought by the applicant in accordance with the provisions of Rule 10 of the Uniform Rules of Court. The applicant seeks an order joining the third respondent as a co-defendant in the action and in the following terms:

- “1. That the Eco Car Hire CC, which is a company registered as such under the company laws of the Republic of South Africa be joined in these proceedings as the Third Defendant in that;

1.1 As at 30th March 2014 it was registered owner of the motor vehicle bearing the registration letters and numbers HFF 446 EC as per the

attached copy of motor vehicle particulars marked as “Annexure A”.

1.2 On the same date, the said motor vehicle collided with the Plaintiff’s motor vehicle bearing the registration letters and numbers FHL 439 EC causing it to sustain damages as more fully described in the Particulars of Claim, which are annexed herewith and marked as “Annexure B”.

1.3 At the time of the said collision the motor vehicle bearing the registration letters and numbers HFF 446 EC was being driven by one Sithembiso Madela, who was an employee of either the First Defendant or Eco Car Hire CC.”

[2] It is apposite to state immediately that in the event of this application succeeding it would be necessary only to direct the joinder of the third respondent as a co-defendant in the action. To accede to the applicant’s invitation to make orders in terms of prayers 1.1, 1.2 and 1.3 of the notice of motion would be to make superfluous orders, which constitute findings on certain of the elements of the main action in terms which are occasionally ambiguous. To do so at the stage of proceedings where an interlocutory application has been brought and no evidence has been led would be irregular and inappropriate.

[3] The background to the application can be stated briefly. The applicant issued a combined summons against the first and second respondents in which the applicant advances a claim for damages which he alleges arises from the negligent driving of the motor vehicle with registration letters and number HFF 446 EC by the second respondent whilst acting within course and scope of his employment with the first respondent. The particulars of claim set out the grounds upon which the applicant relies for the allegation that the second respondent was

negligent. The first and second respondents have filed a plea in which the allegations contained in the particulars of claim are denied.

[4] In order to obtain the joinder of the third respondent in this action the applicant must demonstrate in his founding affidavit that the third respondent has a direct and substantial interest in the action. In an attempt to comply with this requirement, the applicant states in the founding affidavit that the third respondent is to be sued in its capacity as the owner of the motor vehicle concerned. The affidavit continues by alleging that the second respondent committed “wrongful and unlawful acts” against the applicant within the course and scope of his employment by the first respondent. This, says the applicant is the reason why he has sued the first and second applicants. The closing portions of the founding affidavit state unequivocally the reasons for the application for joinder. They are:

- in its plea, the first respondent does not admit ownership of the motor vehicle concerned; and
- it is for this reason that the third respondent is sought to be joined as it is the party reflected as the owner of the motor vehicle concerned in the registration particulars obtained by the applicant.

[5] What is lacking in the applicants founding affidavit, and indeed even in the replying affidavit, are allegations which establish any basis upon which the applicant claims that the third respondent may be liable for the payment of the applicant’s damages. No *vinculum iuris* is established which would demonstrate that the third respondent has a direct and substantial interest in the present action. Liability for the

payment of the applicant's damages on the basis that the third respondent is the owner of the motor vehicle concerned forms no part of the *lex acquilia* upon which the applicant's claim is based. Were the applicant to issue a separate combined summons against the third respondent in which he claimed that the third respondent was liable for the payment of his damages on the basis that third respondent was the owner of the motor vehicle concerned, such summons would be excipiable on the basis that the allegations contained therein were insufficient to sustain a cause of action.

[6] At best for the applicant, the founding affidavit demonstrates that the third respondent has a mere financial interest in the outcome of the litigation. This is an indirect interest which may not require the joinder of the third respondent.¹

[7] In the circumstances, I am of the view that the application cannot succeed. The following order will issue:

“The application for the joinder of the third respondent as a co-defendant is dismissed with costs.”

RWN BROOKS

JUDGE OF THE HIGH COURT (ACTING)

¹ HARTLAND IMPLEMENTE (EDMS)BPK v ENAL EIENDOMME BK EN ANDERE 2002(3) SA 653 (NC) 663 E-H.

For the applicant: Adv MM Matyumza
Instructed by Mafungo Tshaka Inc.
MTHATHA

For the respondent: Adv JL Hobbs
Instructed by JA Le Roux Attorneys
MTHATHA

Matter heard on: 18 February 2016

Judgment delivered on: 03 March 2016