REPUBLIC OF SOUTH AFRICA

IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA 28/7/14

Case Number: 77412/2014

(1) REPORTABLE: YES / NO
(2) OF INTEREST TO OTHER JUDGES: YES/NO
(3) REVISED.

2 July 2015 [signature]
DATE SIGNATURE

In the matter between:

M.M.E. NORTJE N.O.	**APPLICANT**
and	
LP ARTISAN RECRUITMENT CC	**FIRST RESPONDENT**
L.J. PARKIN	**SECOND RESPODENT**
REGISTRAR OF COMPANIES AND CLOSE CORPORATIONS	**THIRD RESPONDENT**
JAN ERASMUS AUDITORS	**FOURTH RESPONDENT**

J U D G M E N T

HIEMSTRA AJ

[1] The applicant seeks an order declaring an oral agreement, allegedly concluded between "the parties" on 25 August 2014 valid, together ancillary relief. It must be pointed out at the outset that it is nowhere alleged that the third or fourth respon-

dents were parties to any agreement. The applicant's case is based on an alleged agreement between her and first and second respondents. Furthermore, it is now common cause that the fourth respondent had nothing to do with the issues between the parties and has no interest in the matter. I assume that the relief is directed at the first and second respondents only. I must also point out that there is no longer an agency by the name of "Regsitrateur van Maatskappy en Beslote Korporasies" (Registrar of Companies and Close Corporations), which is cited as the third respondent. The relevant body is the Companies and Intellectual Property Commission (CIPS).

[2] The ancillary relief sought is to the following effect:

1. That the applicant be allowed to register a certain Mercedes Benz C200 Kompressor into her own name and to retain it as her property;
2. Payment of an amount of R114 609.

Alternatively,

an order in terms of which she and the second respondent are ordered to reach an agreement regarding compensation payable to her for her 20% membership interest in the first respondent, and failing agreement, the appointment of an independent auditor, appointed by the [Independent Regulatory] Board of Auditors to determine the value of her membership interest;

3. An interdict restraining the third respondent (CIPS) from registering forms CK 2 and CK 2A which the applicant had signed for the purpose of terminating her membership interest in the first respondent;
5. Payment of her weekly salary of R7 229.00 until payment of compensation relinquishing her 20% membership interest in the first respondent; and
6. Costs in the event of opposition.

[3] There are many factual disputes on the papers. I considered referring the matter for trial, but that would be a waste of time and money. The version put up by the applicant is so feeble and replete with contradictions and inconsistencies that I am able to reject it without recourse to oral evidence. I can for the same reasons decide the first and second respondents' counter claim without recourse to oral evidence.

[4] It is common cause that the applicant was employed by the first respondent as a payroll administrator and was in due course promoted to the position of financial administrator and manager. She was awarded 20% membership interest in the first respondent. The second respondent retained 80% interest in the close corporation. The second respondent experienced extremely traumatic events and poor health, causing him to leave much of the management of the business to the applicant. He concentrated on marketing of the business.

[5] The applicant resigned as a member of the corporation and now claims compensation for the surrender of her 20% interest. She says that she had orally agreed with the second respondent on her compensation.

[6] The exact terms of the alleged oral agreement is not set out by the applicant in her founding affidavit. That in itself is fatal to her case. I shall, however, construct her version form the Notice of Motion, portions of the founding affidavit, a document put up by the second respondent in his answering affidavit and allegations in her replying affidavit. The alleged oral agreement is the following:

1. That the applicant would be paid out the value of her 20% share;

2. The value of 100% members' interest is R1 423 045.00;
3. 20% thereof is R284 609.00;
4. As part payment the applicant would retain her company car, a Mercedes Benz C200 Kompressor as her property. The value of the car is R170 000.
5. The balance of R114 609.00 would be paid in three monthly instalments of R38 203.00 each.

[7] There is no evidence as to how the amounts have been arrived at. The second respondent put up a document in his answering affidavit, marked "D" wherein the calculations are set out. Annexure "D" is a document prepared by Ms Elize Blom of the auditors Nagel, Blom and du Preez.

[8] Annexure "D" reads as follows:

"2 September 2014
Die lede
LP Artisan Recruitment BK

RE: VERKOOP VAN 20% AANDEEL – MME NORTJE

Na aanleiding van ons vergadering op 25 Augustus 2014, bevestig ons die volgende:

Die waarde van ;n 100% ledebelang in die besigheid volgens die waardasie is R1 423 045.00.
'n 20% aandeel in die besigheid ten opsigte van MME Nortje is R284 609.00
Volgens MME Nortje wat 'n 20% ledebelang het, word die verkoop as volg voorgestel:
Oordrag van die Mercedes Benz – R170 000.
Die balans van R114 609 in 3 gelyke paaiemente van R38 203.00 uitbetaal word.

GETEKEN TE PRETORIA OP HIERDIE 3DE DAG VAN September 2014.

<u>L.P. (sic) PARKIN</u>   <u>M.M.E. NORTJE</u>

The document was signed by M.M.E. Nortje (the applicant) but not by L.P. Parkin (the second respondent).

[9] Annexure "D" is not part of the applicant's case. It was put up by the second respondent. Moreover, in its own terms it is not a recording of an oral agreement. The alleged value of the business is the opinion of Ms Blom, or someone in her office. She is not an expert. Moreover, the terms alleged by the applicant are *ex facie* Annexure "D" a proposal made by the applicant. It says "Volgens MME Nortje wat 'n 20% ledebelang het, word die verkoop as volg voorgestel: ..." This entirely contradicts her version that there had been an oral agreement. In any event, the applicant's version as to where and when the oral agreement had been concluded is contradictory and confusing. In her founding affidavit she said it had been concluded during a meeting on 25 August 2014. She said that the second respondent had however refused to sign the document presented to him. She probably referred to Annexure "D". I find this highly unlikely. If the second respondent had agreed to the terms of an oral agreement, he would have had no reason to refuse to sign it. In any event, Annexure "D" is dated 2 September 2014 and signed by the Applicant on 3 September 2014. In her replying affidavit, the applicant says the following in paragraph 15:

"The auditors Nagel and Blom prepared Annexure "D". When it was presented to the second respondent he did not object to it at all. He concurred with the context (sic) and stated "*Marietjie verdien die kar*". When we left the meeting on the 2nd September everybody was in agreement and the Second Respondent never indicated that he will not sign Annexure "D".

The applicant casually changed the date of the meeting to 2 September without explanation, but apparently failed to realise that the document refers to a meeting on 25 August 2014. This paragraph also contradicts her original version, namely that she and the second respondent had agreed on all the terms of the agreement on 25 August 2014, but that the second respondent had on that day ("op die voormelde datum) refused to sign the document.

OTHER CLAIMS BY APPLICANT

[10] The next issue is the applicants claim for the Mercedes Benz to be registered in her name. This is outrageous. The second respondent said in his answering affidavit that the applicant had on 26 August 2014, the day after the alleged meeting, without his knowledge contrived to have the car registered in her name. The applicant did not dispute this. The car is therefore already in her name. Only she knows how she had contrived to have the car transferred without involving the second respondent.

[11] The applicant further prays for an interdict against the "Registrar of Companies and Close Corporations" restraining it from registering the CK 2 and CK 2A which she had signed for the purpose of removing herself as a member of the first respondent pending the finalisation of this matter. The applicant does not need such relief. Membership of the close corporation is not a precondition for seeking relief against the first and second respondents.

[12] The applicant further claims payment of her salary of R7 229.00 per week pending payment by the second respondent of compensation for her 20% membership. She made no case for this claim in either her founding or replying affidavit. There can in any event be no conceivable basis for such a claim. She stopped working for the first respondent on 25 August 2014 and can therefore have no claim for a salary.

COUNTER CLAIM

[13] The second respondent alleged in his answering affidavit that in 2011 he had suggested, and that the applicant had agreed, to form a close corporation for the purpose of establishing a new business venture which would perform engineering,

maintenance, repairs, technical and consultancy services. They agreed that Ms Blom would assist in acquiring a shelf close corporation for that purpose and that he and the applicant would have 50% membership interests in the new venture. Pursuant thereto Belaflo CC was acquired and the first respondent paid for the corporation and the registration of his and the applicant's names as 50% members. It turned out that the applicant, without his knowledge, had herself registered as 100% member. On 5 September 2014, a few days after the resignation of the applicant, the second respondent stumbled upon a Belaflo file which the applicant had kept in her office. He discovered that a payment had been made to Belaflo CC on 23 August 2011 in respect of a client recruited by the first respondent, in the course of the first respondent's core business, for a corporation in Liberia (The Liberia Transaction). This allegation is confirmed in an affidavit by Ms Maggy Modise, a recruitment consultant employed by the first respondent. Ms Modise had done the recruitment and received her commission in respect thereof. Yet the first respondent's remuneration for the service was paid to Belaflo.

[14] The second respondent also discovered several payments to Belaflo that he seriously questioned. It turned out that the applicant had engaged in micro lending in the name of Belaflo. Belaflo would advance loans to employees of the first respondent from the capital generated through the Liberia transaction. Repayment of the loans plus interest would be deducted from the wages of the second respondent's employees and then transferred to the account of Belaflo.

[15] The second respondent also discovered several questionable payments to Nagel & Blom and to the applicant's attorney, M.L. Schoeman. The first respondent had

not been invoiced by M.L. Schoeman for the amounts. The applicant denied this in her replying affidavit and mentions litigation which M.L. Schoeman had handled on behalf of the first respondent.

[16] The first and second respondents lodged a counter claim for the following relief:

1. That the Mercedes Benz C200 Kompressor be returned to the First Respondent forthwith and that the First and Second Respondents be authorised to retain possession of the said motor vehicle for safekeeping pending the registration of the motor vehicle in the name of the First Respondent;

2. That the Applicant be ordered to take any steps necessary to assist the First Respondent in having the Mercedes Benz motor vehicle reregistered in the name of the First Respondent;

3. That the Applicant provide full disclosure of all financial information pertaining to the First Respondent, Belaflo CC and the Applicant personally;

4. That the Applicant be ordered to pay the costs of this application and the counter application on a scale as between attorney and own client.

[17] I have no hesitation in granting prayers 1 and 2 of the counter-claim. The applicant has not denied that the she had transferred the motor vehicle in her own name. For reasons that only she will understand, she claimed transfer of the vehicle in her own name.

[18] I am also prepared to grant prayer 3 above. The second respondent has established that the applicant may have embezzled money from the first respondent. The first and second respondents do not seek payment at this stage of any sum of money that may appear to be due and owning in respect of the applicants' management of the accounts of the first respondent and/or Belaflo CC. The applicant has proved herself to be deceitful and her denials and explanations carry no weight.

[19] The applicant's claims are misconceived. Her affidavits are contradictory and confusing and disclose untruthfulness. Her behaviour in claiming registration of a vehicle in her own name, which she had already fraudulently have registered in her name is despicable. In these circumstances a punitive cost order is warranted.

In the result I make the following order:

1. The applicant's application is dismissed;
2. The applicant is ordered to return to the first respondent the Mercedes Benz C200 Kompressor forthwith;
3. The first and second respondents are authorised to retain possession of the said motor vehicle for safekeeping pending the registration of the motor vehicle in the name of the first respondent;
4. The applicant is ordered to take any necessary steps to assist the first respondent in having the said motor vehicle reregistered in the name of the first respondent;
5. The applicant is ordered to pay the costs of the first and second respondents on the scale as between an attorney and client.

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J. HIEMSTRA
ACTING JUDGE OF THE HIGH COURT

Date heard:	3 June 2015
Date of judgment:	2 July 2015
Counsel for the applicant:	Adv. M. Coetzee
Attorney for the applicant:	ML Schoeman Attorneys Inc. 300Zambezi Ave Sinoville Pretoria Tel.: 012 562 9900 Ref.: ML0084
Counsel for the first and second respondents:	Adv. Sophia Maritz
Attorney for the first and second respondents:	Diemont Inc Centaur House 38 Ingersol Steet Lynnwood Glen Pretoria Ref.: A Diemont DD2206