

FREE STATE HIGH COURT, BLOEMFONTEIN
REPUBLIC OF SOUTH AFRICA

Case No: 4889/2013

In the matter between:

ERNEST JABULANI MOLOI

Applicant

and

MEDI-CLINIC (PTY) LTD

Respondent

JUDGMENT BY: JORDAAN, J

DELIVERED ON: 21 AUGUST 2014

- [1] The applicant applies for leave to appeal to the Supreme Court of Appeal, alternatively the full bench of this division against the whole of the order and judgment given by myself and delivered on the 28th of June 2014 in terms whereof the applicant's application was dismissed with costs.
- [2] The parties were invited to serve and file heads of argument in relation to the application for leave to appeal whereafter the matter will be disposed of by myself in chambers, subject to any party having any objection to the aforesaid procedure to object thereto within 5 days. None of the parties objected and indeed filed the necessary heads of argument.

- [3] The grounds relied on by the applicant for leave to appeal are in essence exactly the same grounds as were relied upon in the application that served before me. However at this stage the question to be answered and considered is not whether I believe that the judgment was correct but whether, viewed dispassionately and objectively, a reasonable possibility exists that a court of appeal may come to a different conclusion which would lead to a different order from the one I made in the matter.
- [4] In the heads of argument on behalf of the applicant the same arguments that were raised in the application are repeated although not all the arguments are raised in this application again.
- [5] As far as my finding as to *res iudicata* following upon the eviction order granted by the Magistrate Court is concerned, I in any event dealt with the merits of the application in the alternative in the judgment. What is more, it was common cause that, after being notified that the lease agreement will not be renewed, the applicant negotiated and entered into a new two month lease agreement expiring by the end of April of that year. Not only did he do so but, through his attorney, undertook to vacate the premises at the expiry of the extended new 2 month lease agreement. The only reasonable inference to be drawn from his behaviour is that he abided by the decision of the respondent not to renew

the lease and did not rely on any so-called reasonable expectation that the lease will be automatically renewed at the expiration thereof. The stance that the applicant had a reasonable expectation of an automatic renewal of the lease was only taken after the expiration of the extended new lease agreement and after he refused to vacate the premises as undertaken by him.

- [6] As far as the entitlement to renew the lease is concerned and the eviction order that was granted by the Magistrate's Court is concerned, even if I was wrong in holding that it was *res iudicata*, I am convinced that, on the evidence in the matter, another court would not come to a different conclusion as to the success or not of that part of the relief sought. I am therefore, not convinced that a reasonable possibility of a different outcome on appeal exists.
- [7] As far as the related so-called admission privileges are concerned, it is argued that another court might reasonably come to another conclusion in that those privileges are not necessarily connected to the lease agreement. In this regard it is clear from the founding affidavit that the present applicant himself regarded the so-called admission privileges as a corollary to the lease agreement. In paragraph 35 of the application the following is stated by the applicant:

“It was, at all times relevant and pertinent to this application, in the parties’ contemplation that the conduct of my practice from respondent’s premises would, invariably, have obvious financial advantages for the respondent and me. Moreover, it was accepted by both the respondent and me that, consequentially, my patients had come to expect health care services to be rendered by me at the respondent’s premises, as their hospital of choice, be it by way of normal medical service or emergency medical services.”

- [8] From the quoted passage it is clear that even the applicant regarded the admission privileges as consequential upon his leasing of rooms at the respondent’s premises. The applicant himself refers to those so-called “rights” as privileges in various paragraphs of his founding affidavit. The word “privileges” is indicative of the fact that those are not rights but privileges awarded by the respondent to lessees of premises at respondent’s property. The furthest the applicant went in regard to these privileges was to state that the respondent allows some other doctors that do not lease premises from respondent the same admission privileges. It was stated as follows:

“It will suffice at this juncture to point out that the author of the letter unfortunately fails to mention that the respondent has a number of doctors with admission privileges that do not have lease agreements with it.”

It was never contended on behalf of the applicant that all doctors, including him, are entitled to such privileges and have been afforded such privileges by the respondent.

[9] After considering the above and all the arguments on behalf of the applicant, I am not convinced that a reasonable prospect exist of a court of appeal coming to another conclusion that would have any effect on the eventual order made.

[10] On behalf of the respondent it was argued that, if the application is unsuccessful, the costs of two counsel should be allowed. Although, in the main application, I was of the view that the employment of two counsel was justified and their costs should be paid by the applicant, I am not convinced that the employment of two counsel for the purpose of filing heads of argument in the application for leave to appeal is justified.

[11] In the result the application for leave to appeal is refused with costs.

A. F. JORDAAN, J

On behalf of applicant: Adv. N. Snellenburg
Instructed by:

Blair Attorneys
BLOEMFONTEIN

On behalf of respondent: Adv. S. Burger SC
with A. Brown
Instructed by:
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