IN THE KWAZULU-NATAL HIGH COURT, PIETERMARITZBURG

REPUBLIC OF SOUTH AFRICA

Case Number : 8951/2009

In the matter between:-

ANDRIES JONATHAN LATEGAN GEYSER NO	First Applicant
MARYNA ESTELLE SYMES NO	Second Applicant
NARAN MAHARAJ NO	Third Applicant
MANOGH DAYANAND MAHARAJ NO	Fourth Applicant

and

KISLEU (PTY) LIMITED	First Respondent
SILVER CHARM INVESTMENTS 77 (PTY) LIMITED	Second Respondent
PRESENT PERFECT INVESTMENTS 127 (PTY) LIMITED	Third Respondent
PLATINUM MILE INVESTMENTS 509 (PTY) LIMITED	Fourth Respondent
THE MASTER OF THE HIGH COURT	Fifth Respondent
BAE SYSTEMS Plc	Sixth Respondent

JUDGMENT

VAN ZYL, J.:-

1. The present dispute arises from and is incidental to the main dispute which involves the same parties. Although the issues concerned in, what may conveniently be referred to as the main action, are not directly material the present dispute, it is nevertheless necessary to place the present dispute in perspective against the background of the main action.

2. The first to fourth applicants are the first to fourth defendants and the first to fourth respondents are the first to fourth plaintiffs in the main action under case number 8951/09. The Master of the High Court, Pietermaritzburg is the fifth defendant and the fifth respondent, while the sixth respondent is also the sixth defendant.

3. The first to fourth applicants and the sixth respondent, as defendants, initiated application proceedings in terms of rules 30 against the first to fourth respondents. The first to fourth applicants, again joined by the sixth respondent, all as defendants, also initiated applications for security for their respective costs under rule 47, as against the first to fourth respondents. These applications were vigorously opposed and were due for argument when the issues now under consideration arose and interrupted the momentum.

4. For the sake of clarity I will herein after refer to the first to fourth

applicants as the first to fourth defendants, to the sixth respondent as the sixth defendant and to the first to fourth respondents as the first to fourth plaintiffs and where convenient, in context, simply as the plaintiffs or defendants, as the case may be.

5. At the inception of the argument Mr Hartzenberg, who appeared for the first to fourth defendants, raised the issue of the *locus standi* of Mr J. E. V. Hunt to appear in the High Court proceedings on behalf of the plaintiffs. Counsel made it clear that the objection was not limited to Mr Hunt's appearance for argument in the opposed motion proceedings only, but extended from his signature of the plaintiffs' summons initiating the main action, through the opposition to the rule 30 and 47 applications and eventually also to the trial of the main action, should this follow in due course.

6. In developing his argument on behalf of the first to fourth defendants counsel pointed out that before a decision could be made in respect of Mr Hunt's entitlement, or otherwise, to appear on behalf of the plaintiffs, the factual position had to be determined. However, there appeared from the papers to be materially conflicting allegations regarding the position and authority pertaining to Mr Hunt which, so counsel submitted, required the matter to be referred to the hearing of oral evidence in order to resolve these.

7. The issues requiring investigation and clarification by way of oral

evidence related, so counsel submitted, to the alleged employment of Mr Hunt by Christina Seeman & Associates, the plaintiffs' attorneys of record, *inter alia*, in the light of his employment also as a fulltime employee of Transnet Ltd and his position as sole director of each of the plaintiff companies.

8. Mr Broster, who appeared on behalf of the sixth defendant, supported the first to fourth defendants' submission that a referral to oral evidence was required and pointed out that it was not sufficient for Mr Hunt and/or Ms Seeman simply to enter the witness box. This was because the issues involved required preparation, also by way of advance discovery of documentation and records relevant to the issues to be explored during the course of the oral evidence and that this would necessitate the postponement of the matters, as proposed on behalf of the first to fourth defendants.

9. Mr Hunt, claiming to do so on behalf of the plaintiffs, sought to oppose the referral of the matter to the hearing of oral evidence. But Mr Hunt could not advance any persuasive argument that the issues of concern and potentially affecting his right to appear on behalf of and to represent the plaintiffs in the High Court litigation, as raised on behalf of the defendants, should not be decided *in limine* and that, in order to do so, a referral to the hearing of oral evidence could be avoided.

10. In the result the matter was referred to the hearing of oral evidence in

terms of rule 6(5)(g) on the issue of the claimed right of Mr Hunt to appear on behalf of the plaintiffs in the High Court proceedings and it was directed that both Mr Hunt, as well as Ms Attorney C. Seeman submit to cross examination in this regard. Provision was made for advance discovery of documentation relevant to the issue and costs were reserved.

11. At the hearing of oral evidence both Mr Hunt, as well as Ms Attorney Seeman submitted to cross examination. A curious factual position emerged. It is common cause that Mr Hunt has at all material times been and remains admitted as an attorney of this court and that he has been afforded the right to appear in the high court by virtue of the provisions of section 4(2) of the Right of Appearance in Courts Act 62 of 1995. It is further common cause that since 2007 he was and remains in the fulltime employ of Transnet Limited.

12. Mr Hunt and Ms Christina Seeman, ostensibly his employer and instructing attorney in the main action as well as the various applications to which it has given rise, are husband and wife. According to Ms Seeman she qualified as an attorney in the year 2000 and worked only for a few months thereafter before discontinuing practice, apparently due to ill health at the time. Thereafter she devoted her time to raising her young children, but worked briefly as a lecturer in contract law at Varsity College. Effectively, however, she did not practise as an attorney from shortly after her admission as such, until she opened the firm of

Christina Seeman and Associates during June 2009, operating from the matrimonial home.

13. It is apparent from the evidence that the sole purpose of the creation of the firm Christina Seeman and Associates was to act as the plaintiffs' attorneys in the main action. These are her only clients. Apart from herself, the firm has no employees except, so she alleges, her husband who was employed by her for the single purpose of dealing with the four plaintiffs' claims.

14. Despite the fact that Mr Hunt, according to Ms Seeman ".. *consults to my firm in his capacity as a professional assistant..*, the firm has rendered no fee notes and has generated no income. Ms Seeman confirmed that, apart from informing the KwaZulu-Natal Law Society that Mr Hunt was employed in her firm, there exists no formal record of such employment. So, for instance, has he not earned any income from the firm and he is not registered with any statutory body or for any statutory purpose, including income tax, as an employee of the firm, nor has his name ever appeared on the firm's letterhead in any capacity.

15. Ultimately Ms Seeman conceded that, some savings apart, she personally has no income and that she is financially entirely dependent upon Mr Hunt, to whom she referred to as the breadwinner.

16. Mr Hunt, in response to a question whether the firm of Christina Seeman

and Associates had sent his (the plaintiff) companies any fee notes, responded that his wife ".. *has not sent me a fee note for the work that I have done. M'Lord why would ..*". Indeed, Mr Hunt was constrained to concede that the only matters in which he was involved in as an employee or consultant of the firm Christina Seeman and Associates related to the plaintiffs' claims in the main action and matters incidental thereto.

17. It is also apparent that, at all material times, Mr Hunt was and remains the sole director of each of the plaintiff companies, which he claims are active in business but whose actual business activities remain for present purposes unclear. He was and remains a fulltime employee of Transnet Limited.

18. The first to fourth defendants object to the fact that Mr Hunt purports to appear on behalf of the plaintiffs in these proceedings on various grounds. It is submitted on their behalf that as the sole director of each of the plaintiff companies, Mr Hunt has no locus standi to appear in the high court. This rule has been generally applied since the decision in Yates Investments (Pty) Limited vs Commissioner for Inland Revenue 1956 (1) SA 364 (AD).

19. Counsel submitted that although this court retains, by virtue of its inherent power to regulate its own proceedings, the ability exceptionally to permit corporate representation otherwise than by a legal

representative duly qualified to appear, such discretionary audience was to be sparingly granted, only in exceptional circumstances and then only to be obtained by way of a timeous and properly motivated application for such relief. In such application it had to be demonstrated that the circumstances of the particular matter called for a relaxation of the rule requiring professional representation. In this regard counsel relied upon Manong & Associates (Pty) Limited vs Miniter of Public Works and Another 2010 (2) SA 167 (SCA) and pointed out that in the present instance no such application has been made, or such concession sought.

20. Counsel further stressed that Mr Hunt, not only as the sole director of each of the plaintiff companies, but also by virtue of his historical and continued involvement in their affairs and activities, was likely to be both a material and potentially controversial witness in their causes in connection with the main action, including the pending interlocutory applications. Counsel stressed the self evident undesirability of the legal representative of a litigant also being its witness in the same proceedings.

21. Counsel drew attention to and emphasised the potentially conflicting pressures which would be brought to bear upon Mr Hunt, were he permitted to appear on behalf of the plaintiffs in the various proceedings in the main action, as well as the other matters flowing therefrom. On the one hand he would be required to discharge the functions of a legal representative, which requires a degree of detachment from the immediate wishes and desires of his client. In my view it matters not

whether such functions have to be discharged in the capacity of an advocate or attorney with right of appearance. In either event Mr Hunt would likely find it difficult, if not impossible, to observe such detachment when, effectively, he is the client.

22. Counsel also submitted that the situation is likely to arise where Mr Hunt, particularly after having given evidence on behalf of the plaintiffs, as counsel would be required to make submissions to the court as to the credibility, candour and integrity of the plaintiffs' witnesses, of whom he was one. This, so the submission ran, would place both him and the court in a most difficult position. Accordingly, so it was submitted, Mr Hunt's personal interests and professional obligations would find themselves in conflict to a degree where this court would be justified in prohibiting the appearance of Mr Hunt on behalf of the plaintiffs in the main action and interlocutory matters flowing therefrom.

23. Mr Broster for the sixth defendant associated himself with the submissions of Mr Hartzenberg for the first to fourth defendants and in addition sought to emphasise the conflicting roles and duties towards the court of a legal representative for a party on the one hand, and the subjective interests of such a party as a litigant in litigious proceedings before a court of law on the other hand.

24. With reference to De Villiers and Another vs McIntyre NO 1921 AD 425 counsel submitted that the requirement of the independence of a legal

representative was of long standing and that the position of Mr Hunt was far more difficult than was the case in Elgin Engineering Co (Pty) Limited vs Hillview Motor Transport 1961 (4) SA 540 (N), where the instructing attorney who was called as a witness by counsel, gave unchallenged evidence and Wessels, J. nevertheless held it to be undesirable.

25. In the present circumstances Mr Broster submitted that the situation could be summarised thus; Mr Hunt, as the sole director of the plaintiff companies instructs his wife (Ms Seeman, the plaintiffs' attorney). She in turn instructs Mr Hunt (her employee) to sign the particulars of the plaintiffs' claim in his capacity as an attorney with right of appearance in the high court and to appear as counsel for the plaintiffs in that forum when in law, as sole director of the plaintiffs, he effectively is the client.

26. Counsel submitted that the situation was absurd, in that should Mr Hunt, appearing as he does as counsel, require to take instructions in order to reply to a question from the court, then he would then have to turn to his wife as instructing attorney, who would have to consult with him as sole director of the plaintiffs and then instruct him as counsel in terms of instructions he gave her as the plaintiffs' director. The undesirability of the situation is self evident.

27. Both counsel for the defendants emphasised the requirements of honesty, truthfulness and independence in relation to counsel and submitted that Mr Hunt has not achieved those standards in relation to

his alleged capacity as counsel for the plaintiffs in these proceedings. It was submitted that Mr Hunt failed to make a full and candid disclosure of his relationship with the plaintiffs' attorneys of record and that, in any event, both he and Ms Seeman were unclear whether his involvement with the latter's firm was that of a professional assistant, which is akin to an employee, or that of a consultant, which is akin to a professional associate different from that of an employee over which the employer can exercise control. In this regard counsel referred to Smit vs Workmen's Compensation Commissioner 1979 (1) SA 51 (AD) where Joubert JA at page 61 A-H set out the different legal characteristics of a contract of service (*location conduction operarum*) and a contract of work (*locatio conductio operis*).

28. But all this gives rise to a further question, namely why the plaintiffs, through Mr Hunt and Ms Seeman, sought to rely upon such a convoluted arrangement to achieve legal representation in these proceedings by Mr Hunt in particular. It has not been shown that should Mr Hunt, for whatever reason, be unable to represent the plaintiffs, that they would then be unable to secure alternative legal representation so that, in the event of Mr Hunt being disqualified, an injustice to the plaintiffs would result. In the circumstances I am driven to the conclusion that, for reasons of his own, Mr Hunt wishes personally to represent the plaintiffs in these proceedings.

29. Since no application was made for relaxation of the general rule, thus

enabling the representation of the plaintiff companies in these high court proceedings by Mr Hunt in his capacity as their sole director and moving force behind the plaintiffs, it follows that Mr Hunt did not believe that he could justify such an exception within the framework of the requirements set out in the Manong's case (supra).

30. The only other manner in which he himself could then conceivably manage to represent the plaintiffs in the legal proceedings to be commenced with the institution of the main action, whilst at the same time retaining his employment with Transnet Limited, which represents the source of his and Ms Seeman's immediate livelihood, was to qualify as a practitioner, with right of appearance in the high court.

31. That, no doubt, is what gave rise to the decision, either made by Mr Hunt or, alternatively, taken between Mr Hunt and Ms Seeman, for the latter nominally to establish a legal practice and thus to obtain a fidelity fund certificate from the KwaZulu-Natal Law Society.

32. Section 41(1) of the Attorneys' Act 1979 provides that:-

> "*41 Possession of fidelity fund certificates by practitioners practising on own account or in partnership*
>
> *(1) A practitioner shall not practise or act as a practitioner on his own account or in partnership unless he is in possession of a fidelity fund certificate.*"

33.It is immediately apparent that a practitioner practising other than for his own account or in partnership, does not require a fidelity fund certificate in order to perform the functions of a practising attorney. The obvious manner in which to do so would be as an employee of a firm which holds such a fidelity fund certificate.

34.Of course, as a fulltime employee of Transnet Mr Hunt could not himself establish a legal practice and obtain a fidelity fund certificate in his own name. This suggests that the stratagem devised was for his wife Ms Seeman to do so and then for Mr Hunt, ostensibly as her employee, without the need for his own independent fidelity fund certificate, thus to be enabled to personally to appear for and to represent "his" companies in the intended high court litigation.

35.The Merriam-Webster Dictionary defines a "*stratagem*", *inter alia*, as 1. *a*: an artifice or trick in war for deceiving and outwitting the enemy *b*: a cleverly contrived trick or scheme for gaining an end; and 2 : skill in ruses or trickery. The New Shorter Oxford English Dictionary gives its meanings as 1. A military ploy, a piece of strategy, esp. an artifice or trick designed to outwit or surprise the enemy; and 2. An artifice, a trick, a device or scheme for gaining an advantage. b. Skill in devising expedients; cunning.

36. From the evidence it becomes clear that the creation of the firm of Christine Seeman and Associates was merely a stratagem devised to provide Mr Hunt with the means of appearing in person in the high court on behalf of "his" companies, the plaintiffs in these proceedings, when otherwise he would be unable to do so.

37. Ms Seeman by no means fulfils the role of a practising attorney in the true sense of that expression. She is but putty in the hands of her husband and has not sought at any stage to act in any manner independently from him. The suggestion that Mr Hunt is "employed" by Christene Seeman and Associates is no more than an illusion created by Mr Hunt, or by Mr Hunt and Ms Seeman acting jointly.

38. In the process this stratagem, in my view, reflects adversely upon the integrity of both Mr Hunt, as well as of Ms Seeman. To create a pretence in order to achieve that which cannot otherwise be attained by fair means brings to mind the words of James JP in Ex parte Swain 1973 (2) SA 427 (N) at 434H, as quoted with approval by Howard JP in Society of Advocates of Natal and Another vs Merret 1997 (4) SA 374 (N) at page 383 C-D, namely;

> "'*Furthermore, it is of vital importance that when the Court seeks an assurance from an advocate that a certain set of facts exists the Court will be able to rely implicity on any assurance that may be given. The same standard is required in relations between advocates and between advocates and attorneys. The proper administration of justice could not easily survive if the professions were not scrupulous of the truth in their dealings with each other and with the Court. The applicant has demonstrated that he is unable to measure up to the required standard in this matter.*'"

39. In the circumstances it appears to me inevitable that Mr Hunt cannot be permitted, as a legal practitioner, to represent or to appear on behalf of the plaintiffs in these proceedings. This is so in the first instance by reason of my finding, as set out above, that there was not in existence any *bona fide* relationship of employment between Mr Hunt and his wife Ms Seeman and in terms of which Mr Hunt is employed as an attorney by his wife's firm. It follows that he requires a fidelity fund certificate in his own right, which he does not have and without which he is not entitled independently to practice as an attorney and to represent the plaintiffs in these proceedings.

40. But even if I were wrong in these conclusions to which I have come then, in any event, Mr Hunt's personal interests are so intertwined with the interests of the plaintiffs that he is manifestly unable to properly discharge the functions of an independent legal practitioner in purporting to represent the plaintiffs in these proceedings. As such, in the exercise of its residual discretion arising from its inherent powers to regulate its own proceedings, I consider the facts of the present matter to be of such a nature that it would be proper to disqualify Mr Hunt from representing the plaintiffs in these proceedings.

41. The disqualification of Mr Hunt as legal representative for the plaintiffs in the circumstances also impact upon the issue of the costs brought about by the defendants' objections to his *locus standi*. I see no reason why

costs should not follow the result. The first to fourth defendants, as well as the sixth defendant, successfully resisted the representation of the plaintiffs by Mr Hunt. In the process the first to fourth defendants employed the services of two counsel and the sixth defendant the services of senior counsel. In my view the complexity of the issues arising from the main action, as well as the rule 30 and 47 applications, justify such employment and the present issue, relevant to the objections to the representation of the plaintiffs by Mr Hunt, was by no means free from difficulty and needs to be evaluated against the background of the other matters as well. The fifth defendant, though not actively opposing, took the precaution of briefing counsel to protect his interests. I see no reason to deprive the fifth defendant of such costs as he incurred in so doing.

42. As is also apparent from what I have said above, I remain disturbed by the stratagem created in an attempt to achieve legal representation for the plaintiffs by Mr Hunt. Both Mr Hunt, as well as Ms Seeman, are attorneys and thus officers of this court and as such are liable to maintain the high standards of integrity demanded from such practitioners. I therefore propose directing that the Registrar of this Court forward a copy of this judgment also to the KwaZulu-Natal Law Society, Pietermaritzburg, for such steps as that body, as guardian of the attorneys' profession in our province, may decide to initiate in all the circumstances of this matter.

43. In the result I make the following order:-

a. It is determined that Mr J. V. E. Hunt is not entitled to appear for or to legally represent the first to fourth plaintiffs inclusive in the action under case number 8951/2009, including any and all interlocutory or other proceedings incidental thereto, or arising therefrom.

b. The plaintiffs shall jointly and severally, the one paying the others to be absolved, pay the costs of the proceedings relevant to the determination of the issue of the *locus standi* of the said Mr J. V. E. Hunt, including the costs of the referral for and the hearing of oral evidence and all costs previously reserved relevant thereto. With regard to the first to the fourth defendants, both inclusive, their costs shall include the costs of two counsel, where employed. The costs of the sixth defendant shall include the costs of senior counsel and the fifth respondent shall be entitled to recover such costs as he incurred. All costs shall be calculated on the scale as between party and party.

c. The remaining applications in terms of rules 30 and 47 are adjourned *sine die* and their costs are reserved.

d. In addition I direct that the Registrar of this Court forward a copy of this judgment to the Chief Executive Officer of the KwaZulu-Natal Law Society, Pietermaritzburg, for such steps as that body, as guardian of the attorneys' profession in our province, may decide to initiate in all the circumstances of this matter.

VAN ZÿL , J.

APPEARANCES:

For the First, Second, Third and Fourth Applicants:	Adv C. J. Hartzenberg SC with Adv Ms M. E.van Jaarsveld, instructed by Login Attorneys of Pietermaritzburg. Ref: Mrs Lindy Logan
For the First, Second, Third and Fourth Respondents:	Mr J. E. V. Hunt, instructed by Christina Seeman & Associates c/o Tatham Wilkes Attorneys, Pietermaritzburg. Mr. NR Tatham
For the Fifth Respondent:	Adv M. Chetty, instructed by the State Attorney. 116/913/09/K/P17
For the Sixth Respondent:	Adv L. B. Broster SC, instructed by Woodhead Bigby & Irving, c/o Ngcobo Poyo & Diedricks Inc of Pietermaritzburg. Ref: 11/W006/036 Ref: RCM/SP/14B1796A9 Ref: Mr. I Olivier
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Delivered :	10 March 2012