

IN THE HIGH COURT OF SOUTH AFRICA

GAUTENG DIVISION, PRETORIA

CASE NO: 121053/2023

DATE: 2024-06-04

DELETE WHICHEVER IS NOT APPLICABLE

(1) REPORTABLE: ~~YES~~ / NO.

(2) OF INTEREST TO OTHER JUDGES: ~~YES~~ / NO.

(3) REVISED. ✓

DATE 26/7/2024

SIGNATURE

10 In the matter between

FUMANI HOLDINGS (PTY) LTD

Applicant

and

MINISTER OF FINANCE AND 35 OTHERS

Respondent

EX TEMPORE J U D G M E N T

HOLLAND-MUTER J:

20 [1] Matter 6 on this week's roll, opposed motion court, case 121053/2023. It is the matter of Fumani Holdings (Pty) Ltd v the Minister of Finance and 35 Other Respondents. Just for the record, on the list in my book it says the Minister of Police but it is the Minister of Finance.

[2] There is an argument between counsel, Mr Seape and Mr Sive on the other side, with regard to the Applicants filing supplementary heads of arguments as late as this morning ten past seven. Now, the purpose of having a matter fully prepared to court is to assist the presiding judge to have everything before him, to read it in advance and to accommodate and to hear parties when they argue their matter.

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[3] If I listen to what Mr Seape said and he first wanted to generalise but he later individualised and he said that is his experience, is that this is how it is done, by implication saying that even on the morning of the trial further submissions, written documents, *et cetera*, may be uploaded onto CaseLines. Now, that is totally unacceptable.

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[4] In the old days when we were, before CaseLines, where there were proper files, hardcopies of files, there would have been no way that this could have taken place but ingenuous as counsel and litigants may be, they are taking advantage of the CaseLines system and by uploading documents late nights, early morning, irrespective of whether the roll has closed

or not closed, I take a very grim view thereof and that the argument is further presented that this is a practice which has developed. If it is so, that is a practice that should be routed out in its entirety because that is not how it is supposed to work.

[5] I ask Mr Seape if he would have done this in the Supreme Court of Appeal or in the ConCourt, Constitutional Court, he said, no, he would not have
10 done it; then I fail to see why they want to do it in the high courts. Although we are in a lower hierarchy as the Supreme Court of Appeal and the Constitutional Court, it is immaterial in which court we are.

[6] Even in the magistrates' court this would amount to almost a card game that you keep some of your aces close to your chest and you only put it on the table at number 99 and half. it is unacceptable. I have read the initial heads, I have read all the documents, I
20 have read the supplementary answering affidavits, the conditional further affidavit by the first Respondent. I saw this morning, just past eight when I entered my chambers and I went onto CaseLines, it is the norm as to see what other correspondence is on my email, and I saw that there is something of this

matter and I was astounded to see that there is further arguments.

[7] I briefly looked at it in the time which was available to me, and it seems to me that there was not only submissions being made but there is also in this an attempt to put further evidence before Court which is totally unacceptable. On the other hand, I have heard that it is a tender for 36 months and that the
10 Applicant wants to deal with that although he has been disqualified by the authorities in his application.

[8] I am going to allow this matter to continue today but I will not, I will not listen to any attempts to introduce further evidence, particularly on what Mr Zulu Maloyi said and explanations made because in this instance i want to refer to the normal sets of affidavits before Court. There are three affidavits, a founding affidavit, and answering affidavit, and a replying
20 affidavit.

[9] In the replying affidavit, well, if I can go to the purpose of the founding affidavit is that is where an Applicant is supposed to disclose and to put out his case, everything which he knows. It is not for a party

to come in a replying affidavit and to bring in new evidence unless they can convince the Court that it was not to their disposal when they compiled the founding affidavit.

10 [10] Some of the aspects which were brought into the replying affidavit, referring to, *inter alia*, Mr Zulu Maloyi and other bidders, that information was not new. It is information on their own and if I can go to my notes which I made, they knew since the 12th of April 2023 and that is the Applicant, about other letters which were disseminated to them by the first Respondents about asking them to clarify certain issues.

20 [11] So, for more than a year, the Applicant was aware of this but they declined to put it in, firstly, their founding affidavit in the urgent application, and when they were confronted after they brought in new evidence, new aspects which they mentioned in the replying affidavit and the first Respondent deemed it necessary to respond to that, with a prayer of condonation in the further supplementary answering affidavit.

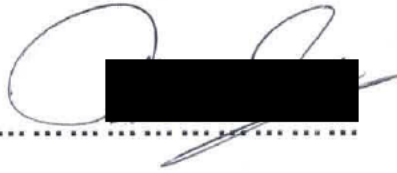
[12] The correct route, in my view, would have been for the Applicant to reply to that in a further affidavit with the necessary prayer for condonation but to keep it up your sleeve up until the morning of, an hour and a half, two hours before the Court takes session and then to file the document which purports to be supplementary heads of arguments but it also refers to items which were not canvassed in any of the affidavits. it is not fair towards all the parties.

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[13] Under the circumstances I feel, I am of the view that it is not the correct route which has been followed, it is not the correct procedure to do it and to keep it up your sleeve until the morning of the trial. The matter will proceed but any reference to documents, *et cetera*, which should have been annexed, and which was in the possession of the Applicant since April 2023, I am not going to allow it.

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[14] We do not play games, we bring matters here to be adjudicated and everybody must have a fair opportunity to have their case ventilated but by doing this, it is nothing more than an ambush which has taken place.



HOLLAND-MUTER J

JUDGE OF THE HIGH COURT

DATE: 26/7/2024