

THE REPUBLIC OF SOUTH AFRICA



IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG HIGH COURT DIVISION, PRETORIA

Case no: 2532/2023

(1) REPORTABLE: NO
(2) OF INTEREST TO OTHER JUDGES: NO
(3) REVISED. [REDACTED]
03 OCTOBER 2024
DATE SIGNATURE

In the matter between:

HYPOWER HEAVY CURRENT MAINTENANCE (PTY) LTD

Applicant

And

NATIONAL EDUCATION GROUP HOLDINGS (PTY) LTD

Respondent

JUDGMENT

MAKHOBHA, J

- [1] The plaintiff and the defendant's matter was certified by the high court commercial court committee as a commercial court matter.
- [2] The High Court commercial court committee is designated by the Deputy Judge President of the Gauteng North High Court.
- [3] In terms of the commercial court practice Directive on 23 May 2023 the DJP allocated the matter to Judge Molopa – Sethosa.
- [4] According to paragraph 1 of Chapter 3 of the practice Directive the Judge to whom the matter is allocated to must case manage the matter within 15 day of allocation.
- [5] On 2 June 2023 the plaintiff's attorney sent an email to the secretary of Judge Molopa – Sethosa requesting a meeting for the first case management meeting.
- [6] Judge Molopa – Sethosa's office did not respond to the request. On 6 June 2023 the plaintiff's attorney sent a letter to the DJP's office to complain about the delay and requesting that another Judge be allocated. The plaintiff did not receive any response from the DJP's office.
- [7] On 25 October 2023 the applicant's attorney sent another letter to the DJP's office and requesting leave in term of section 47 (1) of the Superior Courts Act to bring an application against Judge Molopa – Sethosa to compel her to comply. A copy of the said letter was also emailed to the secretary of Judge Molopa – Sethosa.

- [8] The plaintiff did not receive any reply from either the DJP's office or Judge Molopa – Sethosa. The application was also sent to the office of the Judge President.
- [9] The secretary of the JP telephoned the plaintiff's attorney asking him to afford the office of the DPJ at least a month to reply to their letter.
- [10] No further response was received from the office of the DJP and JP. On 13 February 2024 the plaintiff's attorney again asked the JP's consent to bring an application against Judge Molopa – Sethosa and the same e-mail was sent to the secretary of Judge Molopa – Sethosa.
- [11] Eventually a virtual meeting was arranged between the legal representatives of the litigants and the secretary of Judge Molopa – Sethosa.
- [12] No further response was received from secretary of Judge Molopa – Sethosa confirming the meeting between the parties. The meeting did not take place.
- [13] On 13 May 2024 the plaintiff served the present application to the offices of the JP, DJP and Judge Molopa – Sethosa.
- [14] The plaintiff is therefore asking this court to order that this matter be de-classified or de – certified as a commercial matter.
- [15] The matter will then become an ordinary matter. The plaintiff will be *dominus litis* party. In the words of counsel for the plaintiff "they are no longer left at the mercy of Judge Molopa – Sethosa" ¹.
- [16] Counsel for the plaintiff / applicant submits that the law does not require the DJP to be cited as a respondent to this application.

¹ CaseLines F9 at par 37.2.

Judge President or Deputy Judge President determine whether the case should be allocated as a Commercial Court case.

6 *The Judge President or Deputy Judge President shall inform the parties in writing of the outcome of the application.*

7 *If the case is allocated as a Commercial Court case, the Judge President or Deputy Judge President will allocate a Judge or two Judges to case manage the matter..”*

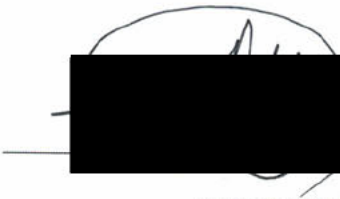
- [24] In my view the JP of DJP office plays a pivotal role in the allocation of a commercial case. Their roles cannot therefore be usurped by anyone unless they are ordered to do so by an order of court.
- [25] In *Judicial Service Commission and another v Cape Bar Council and another*³ the court said the following at paragraph 12 “[12] *It has by now become settled law that the joinder of a party is only required as a matter of necessity – as opposed to a matter of convenience – if that party has a direct and substantial interest which may be affected prejudicially by the judgment of the court in the proceedings concerned (see eg Bowring NO v Vrededorp Properties CC 2007 (5) SA 391 (SCA) para 21). The mere fact that a party may have an interest in the outcome of the litigation does not warrant a non-joinder plea. The right of a party to validly raise the objection that other parties should have been joined to the proceedings, has thus been held to be a limited one (see eg Burger v Rand Water Board 2007 (1) SA 30 (SCA) para 7..”*
- [26] In my view the DJP and the JP have a direct and substantial interest in the running of the court including the commercial court hence the commercial court directive.
- [27] This court cannot give an order that will affect one or some of the commercial matters allocated to a Judge without the knowledge of the JP's or the DJP's office. Therefore, it is further my view that they should have been joined in this matter. For that reason the application should be dismissed.

[28] I make the following order:

28.1 The application is dismissed.

28.2 No order as to cost.

³ 2013 (1) SA 170 (SCA) at par 12.



MAKHOB A J
JUDGE OF THE HIGH COURT
GAUTENG DIVISION, PRETORIA

HEARD AND RESERVED JUDGMENT: 23 SEPTEMBER 2024

JUDGMENT HANDED DOWN ON: 03 OCTOBER 2024

Appearances:

For the Applicant: Dr G J Ebersohn from Gerrie Ebersohn Attorneys
For the Respondent: N/A