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**IN THE HIGH COURT OF SOUTH AFRICA
LIMPOPO DIVISION, POLOKWANE**

CASE NO.: 4067/2024

(1) REPORTABLE: YES/NO

(2) OF INTEREST TO THE JUDGES: YES/NO

(3) REVISED: YES/NO

DATE: 14/05/2026

SIGNATURE:

In the matter between:

MOTWELL PLANT HIRE (PTY) LTD

APPLICANT

AND

SAVIJENI COMMUNICATIONS (PTY) LTD

RESPONDENT

DELIVERED: 14 MAY 2026

This judgment was handed down electronically by circulation to the parties' legal representatives by e-mail. The date and time for hand down of the judgment is deemed to be 14 MAY 2026 at 16h00

Date heard: 13 MAY 2026

Coram: NGOBENI J

JUDGMENT

NGOBENI J

[1] The applicant is MOTWELL Plant Hire (PTY) LTD, a company duly incorporated and registered in terms of the laws of the Republic of South Africa with registration number 2014/050269/07, with its place of business at 3[...] H[...] Office Park, Block D, corner 1[...] Avenue and H[...] Road, Rivonia, Johannesburg.

[2] The respondent is SAYIJENI Communications (PTY) LTD, a company duly incorporated and registered in terms of the laws of the Republic of South Africa with registration number 2013/173477/07, and has its registered address at 1[...] B[...] Street, Onverwacht, Lephalale.

[3] This is an application for provisional liquidation of the respondent and for it to be placed in the hands of the Master of the High Court. The applicant alleges that the respondent is indebted to it in the amount R357 322-43 (three hundred and fifty-seven thousand three hundred and twenty-two rand forty-three cents).

[4] The respondent raised a point *in limine* which for the sake of completeness I am going to as far as possible quote the submission as it appears on the answering affidavit of the respondent. It reads as follows:

B. POINT IN LIMINE: PACTUM DE NON CEDENDO

"11. Clause 3 of the plant hire concluded between the applicant and Tseke Construction CC on 12 June 2023 restricts Tseke Construction CC's cession of the contract or debts in its entirety.

12. Tseke Construction CC could not cede its rights as it is the subject of a pactum de non cedendo.

13. The existence of a pactum de non cedendo is fatal to the applicant's application."

[5] Clause 3 of the Agreement that was entered into between the applicant and Tseke Construction CC reads as follows:

"the hirer shall not cede or assign this agreement nor sublet, mortgage, pledge nor in any way encumber the plant, lend or part with possession thereof and shall be obliged to retain the plant on the site and, save for the purpose of returning it to the owner, shall neither remove nor allow it to be removed there from without first obtaining the written consent of the owner"

[6] In simple terms a *pactum de non cedendo* is a contractual clause prohibiting a party from transferring or ceding their rights or claims to a third party without the debtor's consent. In *Born Free Investments 364 (Pty) Ltd v FirstRand Bank Ltd*¹, the court went to an extent of explaining the difference between a *pactum de non cedendo* which prohibits the cession of an existing right or the right that pre-existed before the conclusion of the contract, and a *pactum de non cedendo* of a right which was created by the contract from the beginning or inception of the contract.

[7] The submission by the respondent is that upon reading clause 3 of the Agreement as outlined above, the applicant could not cede any rights and interests according to the Agreement, because the Agreement confines it to dealings pertaining to the plant only. In other words, the Agreement allowed the applicant to cede rights pertaining to dealings relating to the plant only, not any other rights and interests arising from the agreement.

[8] In reaction to the point *in limine* raised by the respondent, the applicant submits that clause 3 of the Agreement relates to the hiring of plant, and the applicant and Tseke had already entered into an agreement before, in which Tseke was allowed to sublet the equipment to the respondent.

¹[2014] 2 All SA 127 (SCA).

[9] It is clear to the court that clause 3 of the Agreement must be interpreted in order to decide as to whether the clause precludes the cession of any other rights and interests arising out of the contract or just confined to dealings relating to plant. In interpreting the contract, the contract would normally at the beginning have the interpretation clause of the terms that are used in that contract.

[10] Although the issue of interpretation was not clearly dealt with in the Agreement, but on what appears to be page 2 of the Agreement, there is a title at the top which is written 'TERMS AND CONDITIONS OF HIRE (GENERAL PLANT)'. There are sub-titles that follow underneath which are the following: Agreement; Plant and Accessories; No Cession or Subletting (which is the subject of the point *in limine*); Period of Hire, Termination, Minimum Hours and Downtime; Rated Capacity and Use of Plant; Permits; Access and Site Conditions, Defects and Breakdown Report.

[11] I am quoting the title and sub-titles of the Agreement so that I can determine whether clause 3 of the Agreement concerns only issues relating to plant or whether it also concerns other rights and interests arising from the Agreement. I do so with guidance from the Constitutional Court, where in the case of *University of Johannesburg v Auckland Park Theological Seminary and Another*², (*University of Johannesburg case*) on paragraph 81 of the judgment the court said that:

"[81] ... The obligation on courts to take a contextual approach to the interpretation of contracts is peremptory. It is not capable of exclusion by agreement between the parties"

[12] The above extract from the *University of Johannesburg case*, *supra*, fortifies what has been said in the opening remarks in the very case that the old adage that context is everything holds true. The title and sub-titles that I have quoted on paragraph 10 of this judgment, relate to how plant should be dealt with in the Agreement. It is therefore my

² [2021] ZACC 13 (11 June 2021).

view that the clauses referred to in the Agreement from pages 2 to 4 only relate to plant not any other rights or interests as suggested by the respondent, because the whole Agreement deals with issues pertaining to plant. In my view the first words on clause 3 of the Agreement which reads: "the hirer shall not cede or assign this agreement" relates to the ceding of plant, and not any other rights.

[13] In the result the point *in limine* that was raised by the respondent is bound to fail. I'm not inclined to make a cost order at this stage as the matter may hopefully still proceed.

[14] In the result the following order is made:

- (i) the point in limine of *pactum de non cedendo* raised by the respondent is dismissed.
- (ii) costs in the cause.

J.T. NGOBENI
JUDGE OF THE HIGH COURT

APPEARANCES

For the applicant: Adv. A.T. Raselebana
Instructed by: Wynand Du Plessis Attorneys

For the respondent: Adv. J.J. Marais
Instructed by: Alers Van Aardt Bester Inc.

Date heard: 13 May 2026

Date delivered:

14 May 2026