REPUBLIC OF SOUTH AFRICA

SOUTH GAUTENG HIGH COURT, JOHANNESBURG

CASE NO: 2010/28436

DATE:08/12/2011

NOT REPORTABLE

In the matter between:

FLORA RADEBE Applicant

and

PHUMZILE EMILY GAMA First Respondent

AIRPORTS COMPANY OF SOUTH AFRICA LTD (*"ACSA"*) Second Respondent

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REASONS FOR JUDGMENT

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[1] On 23 November 2011, I ordered that this application be dismissed with costs.

[2] On 24 November 2011, being the very next day, I received a request for reasons for my ruling. This was followed by a further request for such reasons on 2 December 2011. The second request was made on the basis that the Applicant urgently required the reasons to enable her *"to proceed further in this matter*." On 8 December 2011, a third request was received.

Background

[3] In order to explain the Order that was made in this matter, it is necessary to briefly set out the background pertaining to this matter. The reasons for the order will appear therefrom.

[4] On 22 July 2010, the Applicant launched an application against the Respondents in which she claimed the following relief:

> 4.1 "*that the 1st respondent immediately and/or by order of this Honourable Court vacate the Kiosk I have rented from the 2nd respondent, and wherein the 1st respondent is operating her business unlawfully, and using my equipment or business material without my authority and or my concerned;*
>
> *4.2 that by order of this Honourable Court, 1st respondent must cease from using my brand, 'Flos Stirerazy catering' unlawfully without my agreement."*

[5] Annexed to the aforementioned notice of motion, was a founding affidavit/condonation in which the Applicant stated *inter alia* the following:

5.1 She is an unemployed female adult, trading as a hawker;

5.2 She had to "*take this case and individual applicant due to difficulties*" she had encountered with attorney Chris Manzini;

5.3 She had obtained a hawker's tender from the Second Respondent to run or operate a kiosk located within its premises and/or in property belonging to it;

5.4 She was subjected to the requirements as stated in the confirmatory letter of the Second Respondent dated 13 July 1999, a copy of which was annexed;

5.5 In January 2007, she became ill and underwent medical treatment so her son operated the business in her kiosk;

5.6 She was later introduced to a certain Mr Mphumla Lesley Mamaila and the First Respondent, who were interested in running her kiosk in terms of an agreement for the amount of R4 500.00 per month. A copy of the agreement was annexed;

5.7 When the agreement expired, Mr M L Mamaila honoured the terms of the agreement and left the kiosk, but the First Respondent refused to do so;

5.8 She told the First Respondent that she was in breach of the agreement, but the First Respondent informed her that she had the Second Respondent's support and nothing would stop her;

5.9 She thereafter reported the matter on several occasions to the Second Respondent without success or visible action to avoid further unlawfulness and prejudice to herself;

5.10 She thereafter appointed Manzini Attorneys to represent her in order to get her kiosk back and eject the First Respondent;

5.11 At one stage, she removed the First Respondent's equipment from the kiosk, but found it had been put back and was operating the next day;

5.12 Thereafter, she had a dispute with attorney Chris Manzini concerning the manner in which he had handled the matter;

5.13 Thereafter, she attempted to obtain legal assistance from the Wits Law Clinic, Pro Bona and Legal Resource Centre but all of her applications were declined.

5.14 She regretted the late filing of her application and submitted that it was in the interests of justice and fairness that she be pardoned and therefore that her application be heard.

[6] Following on this notice of motion and founding affidavit, which ended at paragraph 21, there is a document entitled *"Particulars of Claim"* which then runs from paragraphs 22 to 29 and thereafter a document entitled *"ACSA's obligation and enforcement of the rule of law*", which runs from paragraphs 30 to 39 whereafter, she sets out the relief that she seeks as follows:

"RELIEF SOUGHT

1. *That First and Second Respondents pay all the damages I suffered in the amount of R350 000,00 (Three hundred and fifty thousand Rand only) jointly with one paying the other absolved;*

2. *That First Respondent immediately and/or per court order, stop her operation of business and vacate the said kiosk;*

3. *That First Respondent hand me over the fridge, three plates gas stove, two hard plastic tables and six hard plastic chairs in good condition as observed by my son and daughter-in-law, Ms C Khumalo just after the agreement expired;*

4. *Interest in the rate of 18% from the date of court order;*

5. *Further and/or alternative relief; and*

6. Cost of suit."

[7] Annexed to the Applicant's papers as annexure "G" is a letter from the Second Respondent to the Applicant's attorney dated 16 October 2007, in which it is recorded that the Second Respondent had not terminated the tender that it had awarded to the Applicant as per a letter dated 13 July 1999. Thereafter the following facts are recorded:

"1 That your client has leased the premises without our permission, consent and tender requirements. She did not even notify our offices of her decision.

2 Your client utilized a standard Residential Lease Agreement document to enforce a Commercial Lease

3 Furthermore, your client is still charging the illegal sub-lessee R4 500 per month while she is currently paying ACSA R150,00 per month for rental of the premises."

[8] The Second Respondent opposed the relief sought and filed an answering affidavit.

[9] In summary, the Second Respondent's defence to the relief sought is that the Applicant was not entitled to sublet the premises without the express consent of the Second Respondent. In subletting the premises without the

Second Respondent's consent, the Applicant had breached the agreement and the Second Respondent denied that it is liable to the Applicant for any damages as alleged or at all. The Applicant was the author of her own misfortune. The Second Respondent requested that the application be dismissed with costs.

[10] In response thereto, the Applicant filed a document entitled *"Applicant's answer to the Second Respondent's opposing affidavit".* Essentially, this document, which was filed on 8 June 2011, indicates that the Applicant stands by what she previously stated in her previous documentation. It is not an affidavit signed under oath as required by the Rules of this Court.

[11] There are numerous other documents filed in the Court file which are not relevant to the decision reached.

[12] A perusal of the Court file indicates that the following previous orders have been made in this matter:

12.1 On 26 April 2011, Nichols J postponed this matter *sine die* and reserved costs;

12.2 On 31 May 2011, Kathree-Setiloane J postponed this matter to the opposed roll of 14 June 2011 and reserved costs;

12.3 On 15 June 2011, Rautenbach AJ postponed this matter *sine die* and ordered the Applicant to pay the wasted costs

occasioned by the appearances in the Motion Court for week 14-17 June 2011;

12.4 On 23 August 2011, Coppin J postponed this matter *sine die* and reserved costs;

12.5 On 4 October 2011, Boruchowitz J postponed this matter *sine die* and ordered the Applicant, Flora Radebe, to pay the costs occasioned by the postponement.

[13] There are two further applications in the Court file entitled *"First and Second Rescission Applications"* set down for 22 November 2011.

[14] The first such application was made on notice of application dated 12 July 2011 and requests the Court to reconsider the order dated 10 June 2011 by Rautenbach AJ in terms of Rule 42(1)(A)(B). Annexed to this notice is a founding affidavit by the Applicant in which she states *inter alia* the following:

14.1 On two occasions, before Masipa J and Nicholls J, she had utilized an unqualified assistant or representative by the name of Anthony Kgasi, who in response to questions from the aforementioned Judges acknowledged that he was not a qualified lawyer and that he would be representing her in terms of testimony or cross-examination.

14.2 On 31 May 2011, the Second Respondent's Counsel had told Mr Kgasi in the passage outside the court room that he is not entitled to represent the Applicant. Kathree-Setiloane J had thereafter informed Mr Kgasi that he was not entitled to represent the Applicant and postponed the matter to 14 June 2011.

14.3 On 15 June 2011, Rautenbach AJ was also not prepared to listen to Mr Kgasi and told the Applicant to obtain the services of an advocate.

14.4 On 12 June 2011, the Applicant attended Court without an advocate and Rautenbach AJ then postponed the matter and ordered the Applicant to pay the costs occasioned by the appearances during that week.

14.5 Costs orders had been erroneously sought and there were omissions in regard to it so it would be in the interests of justice and fairness that the order be rescinded and replaced by an order of costs in favour of the Applicant *"whom with limited or lack of knowledge of the procedures and Rules of the Court, tried by all means to follow and respect the Rules of this Honourable Court in this case."* In response to this application for rescission, the Second Respondent filed an affidavit in which it took the point *in limine* that it was incompetent for lack of

> compliance with the provisions of Rules 42(1)(a) and (b) of this Court's Rules. The Applicant had been present in Court throughout the proceedings, the judgment had not been erroneously sought or granted and there was no ambiguity, patent error or omission in the order.

[15] Annexed to this affidavit amongst other annexures is a transcript of the proceedings of 14 June 2011 before Rautenbach AJ. It is apparent therefrom that the provisions of Rule 42(1) (a) and (b) were not applicable in that the Applicant was present in Court throughout the proceedings, the judgment was not erroneously sought or granted and there is no ambiguity or patent error or omission therein.

[16] The second rescission application comprises of a founding affidavit in which the Applicant applies for the rescission of the costs order granted by Boruchowitz J and makes no reference to the provisions of Rule 42(1)(a) or (b). Instead, on this occasion, the Applicant states that Boruchowitz J gave her the choice of two options. Either he would dismiss the application or he would postpone it, so as to enable the Applicant to put the file in order. The Applicant chose the second option.

[17] The Applicant thereafter states that Bouchowitz J made that order without realizing that the Second Respondent had *"sneaked in or just placed in the court's file without following the rules and procedures of the court"* certain papers.

[18] The Second Respondent once again raised as a point *in limine* that this application did not comply with the provisions of Rule 42(1)(a) or (b) or (c) of this Court's Rules. A transcript of the proceedings before Boruchowitz J was also annexed to the answering affidavit. As appears therefrom, the Second Respondent's contentions in this regard are well founded.

[19] Against this background, the Applicant appeared in person before me on 23 November 2011. Once again, she was unrepresented and requested permission to make use of the services of the very same Mr Kgasi. This was refused, but she handed up a document entitled *"Founding Affidavit*" in which she yet again sought the rescission of the costs orders by Rautenbach AJ and Boruchowitz J but this time both in terms of Rule 42(b) and (c).

[20] It was explained to her that an interpreter will be provided to her. Once the interpreter was available, it was further explained to her that she had been given numerous opportunities to make use of the services of advocates. In fact, she conceded that two advocates and the Legal Aid Board had spoken to her, offered their assistance but told her that they were disinclined to argue her matter.

[21] It was further explained to her that she had not made out a case for the relief that she had sought.

[22] No case having been made out on the papers, and to date, at least six Judges having been required to read the papers, without being able to deal with the merits of the matter due to the Applicant's inability to procure legal representation or utilize the legal representation that had been provided to her

in the form of Advocates Fine and Moorcroft, it would serve no purpose to further postpone this matter.

[23] Furthermore, it is quite clear that the application constitutes an abuse of this Court's process. The Applicant and Mr Kgasi have purported to utilize the provisions of Rule 42, without taking into account that there is no basis in law or fact for the Applicant to do so.

[24] The Second Respondent is entitled to finality. Each time that the Applicant enrols this application, it is compelled to secure legal representations and incur costs. No basis has ever been made out for any of the relief claimed including the rescission of either of the costs orders.

[25] In effect, the Applicant has attempted to appeal these cost orders, having in effect consented to them and never having requested leave to appeal to do so.

[26] In conclusion, no basis has been made out for any of the relief sought in any of the applications in this file. The Applicant cannot be allowed to continue to abuse this Court's process by postponing this matter *ad infinatum* and never intending to pay any of the costs occasioned by such postponements.

[27] In any event, all of these applications are flawed from inception and are doomed to predictable failure.

[28] It was against this background that I finally ordered that this application was dismissed with costs.

L M HODES S.C
ACTING JUDGE OF THE SOUTH GAUTENG
HIGH COURT, JOHANNESBURG
8December 2011