



REPUBLIC OF SOUTH AFRICA



**IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG LOCAL DIVISION, JOHANNESBURG**

CASE NO:35748/2018

(1)	REPORTABLE: NO
(2)	OF INTEREST TO OTHER JUDGES: NO
(3)	REVISED.
	
..... SIGNATURE DATE

In the matter between:

HOPE MATSHIDISO MADIMA

1st Plaintiff

VUSUMUZI ISAIAH ZAWNE N.O

2nd Plaintiff

MABELINDILE ARCHEBALD LUHLABO N.O

3rd Plaintiff

BENNETT MLAMLI NIKANI N.O

4th Plaintiff

and

JULIA MOTHIRI RATSHITANGA

First Defendant

ESTHER MGIJIMA

Second Defendant

4. Declaring the La Camargue property specially executable at the instance of the plaintiffs in satisfaction of the debt of R13 338 348.33 owed to them by the first defendant;

[2] The first and second defendants have filed a notice of intention to defend the action.

[3] I shall set out briefly the relevant factual complex which provides the background and the context of allegations giving rise to this litigation as contained in the particulars of claim:

3.1 The First Defendant was employed as a trust administrator by the Children's Fund during the period 1 June 2008 to 20 March 2017.

3.2 In or about March 2017 the Children's Trust became aware that the first defendant had defrauded the Children Trust during the period of her employment by misappropriating and/or misusing the Children's Trust funds ("the missing funds").

3.3 The first defendant caused the missing funds to flow directly or indirectly to at least fourteen separate entities mentioned in paragraph 16.¹

3.3 The implicated entities had no business relationship with the Children's Fund save for Irresistible Experts, Hope for Children Foundation and Rwesi Trading which rendered partial services to the Children's Trust against the inflated invoices.

3.4 Entities such as ITA Project Management, ITA Foundation, Ergo flex, Donko and Mandata were at all material times under the direction or control of the relatives and friends of the first defendant, whose names appear under paragraph 17.6.1 to 17.6.4.

3.5 The defendant is the founder, trustee and the beneficiary of their Family Trust;

¹See the list of entities on page 3 of the POC para.16.

further denies that it is indebted to the plaintiffs, and contends that she has a *bona fide* defence to the plaintiffs' claim.

[7] Before determining whether or not the allegations the defendants have made constitute a valid defence to the plaintiffs claim, I propose to deal with the requirements underpinning summary judgment applications.

[8] It is well settled in our law that summary judgment should only be granted in circumstances where the plaintiff has established his claim clearly and the defendant has failed to establish a *bona fide* defence. In considering whether the plaintiff in this matter is entitled to summary judgment, it must be determined whether the plaintiff has shown not only that it has a claim which falls within the ambit of rule 32, but that it has taken all steps to perfect its claim and make it unanswerable.

[9] The grant of a summary judgment is based on the supposition that the plaintiff's claim is unimpeachable and also that the defendant's defence is bogus or bad in law – per Corbet JA in *Maharaj v Barclays National bank Ltd* 1976 (1) SA 418 (A) at 423G-H.

[10] Rule 32(1) provides that the plaintiff may apply for summary judgment on each of such claim in the summons as is only –

- (a) on a liquid document;
- (b) for a liquidated amount in money;
- © for delivery of specified movable property;
- (d) for ejectment

[11] It is currently settled that a claim for the repayment of stolen money is a proper claim in summary judgment proceedings. See *Colrod Motors (Pty) Ltd v Bhula* 1976 (3) SA 836 (W), *Attorneys, Notaries and Conveyancers Fidelity Fund v Tony Alle, (Pty) Ltd and Another* 1990 (2) SA 665 (A) 674B-E; *Nedcor Bank Ltd v Behardien* 2000 (1) SA 307 (C) 311G.

[12] Rule 32(3) provides that the defendant who is faced with the summary judgment application may:

view the plaintiffs have fully set out the nature of their claim, and the amounts which have been misappropriated from the children's trust and paid to specific entities by the first defendant.

[15] It is immediately apparent that for purposes of the requirement of 'liquidated amount in money' as recorded in rule 32(1)(b) a claim for the repayment of stolen money fall within the ambit of summary judgment. See *Colrod* case *supra* 837C-G.

[16] It follows from the foregoing that the defendants' point in limine should be dismissed.

[17] I must now consider whether the defendants' affidavit meet the requirements for resisting summary judgment.

[18] Rule 32(3)(b) provides that the defendant may satisfy the Court by an affidavit that he/she has *bona fide* defence and such affidavit or defence must disclose fully the nature and grounds of the defence and the material facts relied upon therefor. While the defendant need not deal exhaustively with the facts and evidence relied upon to substantiate his/her defence, he must at least disclose his defence and material facts upon which it is based with sufficient particularity and completeness to enable the Court to decide whether the affidavit discloses a *bona fide* defence. See *Maharaj v Barclays National Bank supra* 426D.

[19] In *Shackleton Credit Management (Pty) Ltd v Microzone Trading* 88 CC 2010 (5) SA 112 (KZP) at 122F-I it was held that "...it requires the defendant who wishes to contend that the application is defective to confine themselves to raising that point, with the concomitant risk that if the technical point is rejected they have not dealt with the merits. It will be bold of a Defendant that limits an opposing affidavit in summary judgment proceedings to technical matters when they believe that they have a good defence on the merits..."

[20] Turning to the facts of this case. The defendants have not disclosed the nature and material facts of their defence. All they simply did was to deny the plaintiffs' claim. What is evident from the particulars of claim is that the plaintiffs have set out allegations of the monies allegedly paid by the first defendant from the Children's Trust when she was working as a trust administrator. What is further undisputed is the fact that the implicated entities which received funds listed in the particulars of claim are

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