



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

Case Number: 11/39011

(1) REPORTABLE: NO
(2) OF INTEREST TO OTHER JUDGES: NO
(3) REVISED: YES

28 Feb 2025

DATE

SIGNATURE

In the matter between:

CREATIVE LENS MULTIMEDIA CC

**Applicant /
Plaintiff**

MARRIAM PAMELA SEGAKWENG

First Respondent

**SEGAKWENG ENTERPRISES AND STRATEGY
CONSULTING (PTY) LTD**

**Second
Respondent**

JUDGMENT

Introduction

[1] This is an application by the applicant (plaintiff in the action (the “plaintiff”)) to amend its particulars of claim in an action instituted by it on 3 October 2011. In

these original particulars of claim, the defendant was cited as Segakweng and Associates CC (the “original defendant”). It is these particulars of claim which the applicant wishes to amend.

The dispute

- [2] The proposed amendment arises out of an order of this court granted by Mdalana-Mayisela J on 11 September 2018. The learned judge ordered that, following the deregistration of the original defendant, the first respondent and the second respondent are to be substituted as parties to the action proceedings in ‘place and stead’ of the original defendant. In the alternative, the judge ordered that the first and second respondents are to be joined in the action proceedings. This order was granted unopposed.
- [3] Pursuant to this order and on 13 November 2023, the plaintiff served its notice of intention to amend its particulars of claim on the first and second respondents attorneys of record. This amendment envisaged making the original defendant the “first defendant”, and introducing the first respondent as the “second defendant” and the second respondent as the “third defendant”.
- [4] On 28 November 2023, the second defendant gave notice of objection to plaintiff’s notice to amend and on 14 December 2023 the plaintiff made application, in terms of Rule 28(4), to amend its particulars of claim.
- [5] The defendant’s notice of objection to the amendment raised a number of issues which were not persisted with before me.
- [6] At the hearing the succinct issues are raised by the second defendant were that-
 - a. no formal service on second respondent of the joinder order of 11 September 2018 had taken place; and
 - b. at the time the joinder order was obtained by the plaintiff, the plaintiff’s claim had prescribed.

- [7] In any event the plaintiff's counsel during the hearing dealt comprehensively with the various service of notices and other documents and his submissions were not challenged by the second defendant's counsel.
- [8] The only issue then is whether the plaintiff's claim against the second defendant has prescribed.
- [9] In my view, if prescription is not common cause, the application for amendment is not the proper place to decide this issue. In general, prescription becomes an issue only when it has been introduced into the pleaded issues, usually by way of special plea.
- [10] In this case and at the stage of considering whether an the amendment should be allowed or not and based on apparent probabilities, I do not think the plaintiff should be deprived of the opportunity to present its claims. The defendant can raise the proposed defence of prescription after an amendment is granted in the same way as any other defence that becomes appropriate.
- [11] I add that it is not clear to me what the effect of the court order granted on 11 September 2018 is. The question is whether the second defendant is substituted for the first defendant by stepping into the shoes of the first defendant, in effect, piercing the corporate veil. If so, this would mean that, because prescription has not run against the first defendant, prescription will not have run against the second defendant. Alternatively it could mean that the second defendant is substituted for the first defendant with effect from the date of the order, in which event the plaintiff's claim against the second defendant may have prescribed.
- [12] This is not the appropriate time or place to deal with this issue.

Costs


- [13] Normally when an application to amend is opposed on the basis of excipiability, the costs follow the result. This in this case the plaintiff would normally be entitled to an order for costs.
- [14] The order of this court by Mdalana-Mayisela J was handed down on 11 September 2018. The plaintiff served the amended particulars on the second

and third defendants' attorneys of record on 1 July 2020 and the plaintiff served the notice to amend to give effect to this court order on the second and third defendants' attorneys of record on 13 November 2023. There was a delay of more than five years between the handing down of the court order and the giving of notice to amend to give effect to that court order. This delay in my view is unacceptable and the court should register its displeasure by making no order as to costs.

Order

[15] The plaintiff (applicant) is granted leave to amend its particulars of claim

[16] There is no order as to costs.



A MITCHELL
Acting Judge of the High Court

This judgment is handed down electronically by circulation to the parties or their legal representatives by email, by uploading it to the electronic file of this matter on Caselines, and by publication of the judgment to the South African Legal Information Institute. The date for hand-down is deemed to be 28 February 2025

HEARD ON: 19 February 2025

DECIDED ON: 28 February 2025

For the Applicant: Mr Ditheko Lebethe
Ditheko Lebethe Attorneys
46 Adderly Road
Kensington B
Randburg
079 031 9134
ditheko@lebetheattorneys.co.za

For the Respondent:

Mr Clement Shirilele
Maluleke, Msimang And Associates
44 Melrose Blvd
Melrose Arch
Birnam
Johannesburg
010 448 9714
mma@icon.co.za