

18/8/17

IN THE HIGH COURT OF SOUTH AFRICA

(GAUTENG DIVISION, PRETORIA)

CASE NO: 60027/2015

In the matter between:

MORGAN BEEF (PTY) LIMITED

Applicant/Plaintiff

and

**MKHULU ELECTRO DISTRIBUTION
PROJECTS (PTY) LIMITED**

Respondent/First Defendant

JEAN MARCELLO LAMPERINI

Second Defendant

JUDGMENT

Rautenbach AJ:

1. This is an application in terms of Rule 35(3) of the Uniform Rules of Court in terms of which the Applicant requested certain documentation from the Respondent in terms of a Rule 35(3) Notice dated the 1st March 2016.
2. In the Practice Note that was filed on behalf of the Applicant, at page 6 of the bundle dealing with Set Down, Practice Notes and Heads of Argument, the Applicant indicates that the relief that it seeks in this matter is that the Respondent (First Defendant) be directed to, within ten days, comply with numbered paragraph 1, 2, 16, 18, 19 and 20 of the

Applicant/Plaintiff's Rule 35(3) Notice dated 1 March 2016. These are the items as specified in the Notice in terms of Rule 35(3).

3. The Respondent/First Defendant has opposed this application on various grounds. To sum up the objections on behalf of the First Defendant against providing the documentation to the Applicant are fourfold:

- 3.1. Firstly in respect of some of the documents, they are already in the possession of the Applicant. In my view this is not a proper defence as Rule 35(3) require a Respondent to provide the Applicant with such document.

- 3.2. Secondly that the Applicant was been provided with some of the documents. That having been the case, the Applicant had to bring a new application in terms of Rule 35. I am of the view that this stance is in fact incorrect and there is no duty on such an Applicant to start afresh. No authority for this proposition has been provided by the Respondent to me during argument or in the Heads of Argument.

- 3.3. Thirdly that the information requested is irrelevant. The documents listed is relevant to the main action in that it refers to a claim in respect of a collision between two trucks and some of the questions were related to the identity of the driver as well as the insurance documents. I invited the legal representative for the Respondent to argue why the documents are irrelevant and I am

not persuaded that any of these documents are irrelevant to the main action.

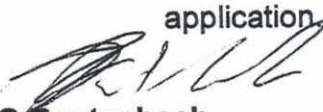
- 3.4. Fourthly the documents are privileged. This statement is made without setting out any basis why the documents could be privileged. The documents requested surely does not refer to communications between attorney and client for purposes of pending or contemplated litigation.¹
4. I am of the view in any event that the reasons why any of these documents should be regarded as privileged has not been set out in the Respondent's Affidavit opposing this application.
5. In the Heads of Argument on behalf of the First Respondent it is suggested that should the Court consider any new matter introduced by the Applicant in his Replying Affidavit, then the First Respondent will seek to supplement its Opposing Affidavit in order to address the new matter raised by the Applicant. Such an application was never forthcoming during argument.
6. In the circumstances I am inclined to grant the relief sought by the Applicant as amended in its Practice Note.
7. A further issue that I will have to deal with is that this matter was on the opposed roll of this Court on the 14th February 2017. A Court Order

¹ Hero Shipping Corporation of Monrovia v. Minister of Agriculture, Economics and Marketing and Others (1979) 3 ALL SA 505 (C) at 509; United Tobacco Company (South) Limited v. International Tobacco Company of S A Limited 1953 (1) SA 66 (T) at 70 D.

marked "X" was handed up to me which was stamped by the Registrar on the 15th February 2017 indicating that the matter was postponed sine die and that the Respondent's Heads were not filed and but that the Respondents have a stamped Heads of Argument in their possession. Costs were then reserved. I am of the view that neither party could be blamed for the state of affairs and that each party should pay its own wasted costs as far as that appearance on the 14th February 2017 is concerned.

8. In the premises I make the following order:

1. The Respondent/First Defendant is directed to within ten (10) days, comply with numbered paragraphs 1, 2, 16, 18, 19 and 20 of Applicant/Plaintiff's Rule 35(3) Notice dated 1 March 2016.
2. The Respondent/First Defendant is ordered to pay the costs of the application.



J.G. Rautenbach
Acting Judge of the High Court
Gauteng Division
Pretoria