

**REPUBLIC OF SOUTH AFRICA**



**IN THE HIGH COURT OF SOUTH AFRICA  
GAUTENG DIVISION, PRETORIA**

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

16 September 2024

Case No:86870/2019

In the matter between:

**115 ELECTRICAL SOLUTIONS (PTY) LTD**

First Applicant

**MPATI, ANTHONY**

Second Applicant

and

**THE CITY OF JOHANNESBURG METROPOLITAN  
MUNICIPALITY**

First Respondent

**NEXUS FORENSIC SERVICE (PTY) LTD**

Second Respondent

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**JUDGMENT**

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**SK HASSIM J**

[1] This is an application to join the Johannesburg Market SOC Ltd (“**the Johannesburg Market**”) as the third respondent in the main application. The

application for joinder was served on the second respondent and the Johannesburg Market. Neither opposes the application. Only the City of Johannesburg does.

[2] For the applicants to succeed in the joinder application they must demonstrate that the Johannesburg Market has a direct and substantial interest and a judgment in the main application cannot be carried cannot be sustained and carried into effect without necessarily prejudicing the interests of the Johannesburg Market.<sup>1</sup> The applicants have failed to do so. The Johannesburg Market does not have a direct and substantial interest in the decision of the point before the Court in the main application.<sup>2</sup>

[3] The Johannesburg Market is a company incorporated under the company laws of the Republic of South Africa. It is a municipal owned entity. Its shares are owned by the first respondent (“**the City of Johannesburg**”). The Johannesburg Market renders services to the City of Johannesburg. The first applicant, the City of Johannesburg and the Johannesburg Market entered into an agreement in terms of which the first respondent delivered goods and rendered services to the Johannesburg Market.

[4] During 2016, the City of Johannesburg appointed the second respondent to conduct a forensic investigation into allegations of theft, fraud and corruption by officials and service providers at the Johannesburg Market.

[5] On about 6 February 2017, the second respondent handed to the City of Johannesburg a report titled “Investigations into the Allegations of Theft, Fraud and Corruption at the Johannesburg Market” (“**the Report**”). The applicants aver that the City of Johannesburg and the second respondent defamed them because the Report

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<sup>1</sup> Amalgamated Engineering Union v Minister of Labour 1949 (3) SA 637 (A) at 661; Henri Viljoen (Pty) Ltd v Awerbach Brothers 1953 (2) SA 151 (O) at 165-71.

<sup>2</sup> Cf. Amalgamated Engineering Union at 659

contains allegations of dishonesty, corruption, and fraud on the part of amongst others the first and second applicants.

[6] In the main application the applicants seek to interdict the first and second respondents from disseminating, replicating or referencing in any manner, electronic or otherwise, or any part of the Report on the basis that the allegations therein are defamatory of them. They also seek an order declaring the Report and its findings relating to the applicants inaccurate and irrational and therefore defamatory.

[7] Both the first and second respondents have opposed the main application. In its answering affidavit in the main application the second respondent contended that the Johannesburg Market has a direct and substantial interest in the main application and the applicant's failure to join it as a respondent is a sufficient ground for the dismissal of the main application. The second respondent argued in that affidavit that the board of directors of the Johannesburg Market has the statutory responsibility to promptly report to the mayor, the municipal manager and the auditor general any irregular, fruitless and wasteful expenditure. And the Johannesburg Market alternatively the City of Johannesburg is compelled to act on the findings in the Report, including laying charges with the South African Police Service.

[8] The first respondent also raised the joinder of the Johannesburg Market in its affidavit opposing the applicants' application to amend the notice of motion. It argued that the persons who are able to comment or elaborate on the correctness of the content of the Report are all employees of the Johannesburg Market. Therefore, if the veracity of the allegations in, or correctness of, the Report becomes an issue in the main application, then the Johannesburg Market is an interested party, and a joinder of the

Johannesburg Market will be necessary to enable it to deal with the veracity or otherwise of the respondents' version of events.

[9] It may turn out that employees of the Johannesburg Market may have to depose to affidavits in the main application either to support the respondents' opposition thereto or perhaps even to support the applicants' case against the respondents. However, the Johannesburg Market does not become a necessary party only because its employees may have to testify in writing (i.e., depose to an affidavit) in the main application. This on its own does not result in the employer, the Johannesburg Market, having a direct and substantial interest in the subject matter of the main application. Nor can a judgement in the main application prejudicially affect the Johannesburg Market simply because its employees may be witnesses in the main application.

[10] The applicants explain in the affidavit in support of the application for joinder that the Johannesburg Market was not cited as a party to the application because there was no contractual relationship between them and the Johannesburg Market. Furthermore, it neither commissioned the Report, authored it, nor owned it. And it did not disseminate it.

[11] It apparent from the applicants' supporting affidavit that the only reason they seek to join the Johannesburg Market as a respondent to the main application is the first and second respondents' attitude on the interest of the Johannesburg Market in the main application.

[12] I am mindful that the joinder application is a response to the second respondent's defence of non-joinder. However, this does not relieve the applicants of the burden to demonstrate that the Johannesburg Market has a direct and substantial interest in the

subject matter of the main application. I am cognisant that the application is aimed at eliminating the risk of the main application failing because the Johannesburg Market is not a party thereto. However, the applicants' remedy was to apply in terms of rule 33(4) for the dispute as to the joinder of the Johannesburg Market to be dealt with separately, and prior to the hearing of the main application. A decision on the non-joinder defence would have determined whether the Johannesburg Market should be joined or not.

[13] The applicants' explanation for not having cited the Johannesburg Market as a respondent does not support an application for its joinder. To the contrary it, destroys it. The applicants' cause of action against the first and second respondents is an interdict prohibiting them from "disseminating, replicating or referencing in any manner whether electronic or otherwise" the Report or contents thereof. But no case for such an order against the Johannesburg Market is made out in the papers. The applicants unambiguously state that as far as they know the Johannesburg Market did not disseminate the Report, replicate or reference it. Furthermore, the applicants do not accuse the Johannesburg Market of having defamed them. Therefore, no cause of action is disclosed for an interdict against the Johannesburg Market. Furthermore, I cannot see how the implementation of the order claimed in paragraph 1.2 of the amended notice of motion for a declarator that the Report is inaccurate and irrational and defamatory of the applicants can prejudice the Johannesburg Market. I am not able to find on the papers that a judgement in the main application can prejudicially affect the Johannesburg Market. Nor can I find that an order in the main application cannot be sustained or implemented without prejudicing the Johannesburg Market. Consequently,

I am not satisfied that the applicants have established that the Johannesburg Market has a direct and substantial interest in the subject matter of the main application.

[14] Accordingly, the application for joinder stands to be dismissed.

[15] That brings me to the question of costs. The second respondent seeks the dismissal of the application for joinder together with costs.

[16] In my view this is not an application where the costs should necessarily follow the result.

[17] While the first respondent does not raise nonjoinder as a substantive defence in the main application, it does so obliquely. In its affidavit opposing the applicants' application for the amendment of the notice of motion it contended "in the event of the applicants persisting with the request that the amendment [to the notice of motion] be granted, it will become necessary for Joburg Market to be joined as a party to these proceedings. Once the veracity or correctness of the Report becomes an issue, then Johannesburg Market undoubtedly will be an interested party. As such, a joinder will be necessary. The joinder will be necessary to enable Johannesburg Market to deal with the veracity or otherwise of the respondents' version of events."

[18] Notwithstanding, this clearly expressed position it opposes the joinder application. The second respondent on the other hand pertinently raised the non-joinder of the Johannesburg Market as a defence and submitted in its opposing affidavit to the main application that the nonjoinder was fatal. Having found that the Johannesburg Market does not have a direct and substantial interest in the interdict nor the declaratory relief it follows that the defence of non-joinder is without substance.

[19] The joinder application is a response to an ill-advised defence of nonjoinder. The costs incurred for the review application are the direct result of this. Considering that the first and second respondents invited an application for the joinder of the Johannesburg Market, albeit indirectly, it is unfair to mulct the applicants with the costs of the flawed application. The applicant argued that in the event of its application failing the first respondent should pay the cost of the application. It will be unfair to decide whether the first respondent should be solely held liable for the cost of the application without considering whether the circumstances of this case warrant the second respondent being mulcted with all the costs or a portion thereof. However, the second respondent has not participated in the joinder application and has not had the opportunity to address me on why it should not bear the costs of the application wholly or in part. The second respondent should be given an opportunity to do so. For this reason, I intend reserving the issue as to the liability for the costs of the joinder application for determination by the court seized with the main application. By then the second respondent would have had an opportunity to address on whom the liability for the costs of the joinder application, wholly or in part, should rest.

[20] Consequently, I make the following order:

- (a) The application for the joinder of the Johannesburg Market SOC Ltd is dismissed.
- (b) The determination of the liability for the costs of the joinder application is reserved for determination by the court hearing the main application.



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**S K HASSIM**  
Judge: Gauteng Division, Pretoria  
(electronic signature appended)

Applicant's Counsel: Adv H Gray  
Respondent's Counsel Adv T Mosikili

Date of hearing: 1 February 2024  
Date of Judgment: 16 September 2024

This judgment was prepared and authored by the Judge whose name is reflected and is handed down electronically by circulation to the parties' legal representatives by e-mail and by uploading it to the electronic file of this matter on CaseLines. The date for hand-down is deemed to be 16 September 2024.