



IN THE HIGH COURT OF ESWATINI

JUDGMENT

Held at Mbabane

Case No. 677/2019

In the matter between:

CONSORTIUM CONSULTING (Pty) Ltd

APPLICANT

AND

PUBLIC SERVICE PENSION FUND

1st RESPONDENT

MDUDUZI MABILA

2nd RESPONDENT

IN RE:

MDUDUZI MABILA

JUDGMENT CREDITOR

ENZIWE DUBE

JUDGMENT DEBTOR

L.C.C. CAPITAL

Co. JUDGMENT

PUBLIC SERVICE PENSION FUND

DEBTOR

Neutral citation: *Consortium Consulting Pty Ltd vs Public Service Pension Fund
& 2 Others [677/2019] [2021] SZHC 25 (8th March, 2021)*

Coram: FAKUDZE, J

Heard: 2nd March, 2021

Delivered: 8th March, 2021

REASONS FOR THE EX TEMPORE JUDGMENT

BACKGROUND

[1] On the 8th February, 2021 the Applicant filed an Interlocutory Application under a certificate of urgency for an order in the following terms:

1. *Dispensing with the usual forms and procedure as relating to time limits and service of court documents, that the matter be heard as one of urgency.*

2. *Condoning the Applicant's non compliance with the Rules of this court as relate to service and time limits.*

3. *That a Rule nisi do hereby issue pending a final determination of the Application calling upon the Respondents to show cause why an Order in the following terms should not be issued by the court:*

3.1 *Interdicting and Restraining forth with the 1st Respondent from paying out the sum E95 000.00 (Ninety Five Thousand Emalangeneni) to the 2nd Respondent and/or his attorneys' bank account in terms of the Garnishee Notice issued under High Court Case No. 677/2021 pending determination of this Application.*

3.2 *Prayers 1,2,3,3.1, and 3.2 operate with immediate effect pending the final determination of this Application.*

4. *Declaring the Garnishee Notice Null and used for its intended purpose against the finds due to the Applicant by virtue of the fact that the Applicant was not a party to the proceedings under High Court case No. 677/2019, as such is not indebted and/or liable to pay any amount to the 2nd Respondent in terms of the Garnishee Notice under High Court Case 677/19.*
5. *Directing the 1st Respondent to pay the Applicant the amount due in terms of the contract of service concluded between the parties.*
6. *Costs of Application in the event the Application is opposed.*
7. *Further and/or alternative relief.*

[2] The 2nd Respondent filed the Notice to Oppose and an Answering Affidavit. In the Answering Affidavit, the 2nd Respondent raised a point of law regarding the capacity of the Applicant to sue arising from the fact that he has no interest in the matter. The matter was first postponed to the 23rd February, 2021 and later to the 2nd March, 2021. It was on the 2nd March that the 2nd Respondent insisted that the points of law be argued because it can dispose of the matter. At the end of the argument, I upheld the point of law and dismissed the Application with costs. I indicated to the parties that reasons for the dismissal will follow later. The purpose of this judgment is to deal with the reasons for the dismissal.

The parties' arguments

2nd Respondent

[3] The 2nd Respondent argued that the Applicant lacks the necessary capacity to bring the Application because it has no vested interest. The 2nd Respondent pointed out the following to substantiate its case:

- (a) The Applicant does not seek the setting aside or rescission of the order against LCC Capital (Pty) Ltd that gave rise to the Garnishee.
- (b) The Applicant does not seek to be joined at the least, to the proceedings that gave rise to the Order in respect of which the writ/and or Garnishee Notice relates.
- (c) The Applicant merely seeks that the 2nd Respondent, a Senior Officer of this court, be interdicted from receiving his Due Fees by virtue of the Applicant not being a party to the initial proceedings (as the argument goes). It is the 2nd Respondent's contention that indeed it has never had dealings with the Applicant (a separate legal entity in its own right) and would have had no reason to institute proceedings against the Applicant. The 2nd Respondent's dealings have been specifically with the Judgment Debtor, a specific distinct and independently and properly registered legal persona being LCC Capital (Pty) Ltd and against whom the writ and garnishee relates. The same has nothing to do with the present Applicant.
- (d) The Applicant and the Judgment Debtor LCC Capital (Pty) Ltd are two entirely distinct legal persona. A company cannot have

another company, properly registered, as its trade name. The 2nd Respondent has specifically sued LCC Capital (Pty) Ltd. It has not sued the Applicant whose name is distinct from the Judgment Debtors. It is LCC Capital (Pty) Ltd that can challenge orders relating to it. The Applicant has no business in the same.

(e) The Garnishee (Pension Fund) is very specific as to the entity whose money it holds. At page 42 it says that it holds funds in the name of LCC Capital (Pty) Ltd. This is not the present Applicant.

[4] Following the point of law raised by the 2nd Respondent, the court, on its own, asked counsel for the Applicant to address it on the following based on the papers filed of record:-

(a) At pages 60 to 65 of the Book of Pleadings, the Garnishee, Public Service Fund, makes it clear that LCC Capital (Pty) Ltd and not the Applicant made the proposal following the advertisement of the Tender and the Garnishee accepted it.

(b) The abovementioned Tender was made on the 23rd April, 2020 and addressed to the Secretary of the Garnishee in the name of Enziwe Dube. See page 67 of the Book of Pleadings. The change of ownership allegedly took place on the 16th April, 2019 it being the date Enziwe Dube resigned. See page 78 of the Book of Pleadings. See also page 74 where Nhlabatsi became the Director on 16/04/2019 although same was signed on 16/04/2020 and stamped 20 April, 2020. See also page 77 of the Book of Pleadings.

(c) At page 68 of the Book of Pleadings LCC Consulting (Pty) Ltd makes an undertaking to keep confidential information obtained or accessed during its assignment. It is not the Applicant that makes the undertaking the undertaking.

(d) At page 71 (a Trading Licence) for the year 2020, is issued in the name of the Applicant but same is Trading as LCC Capital Consulting (Pty) Ltd. The trading Licence was part of the documents that were given to the Garnishee as part of the Tender.

(e) The explanation by the Garnishee's legal representative (which is in pages 58 to 65 of the Book of Pleadings) makes it clear that the Garnishee engaged the services of LCC Capital and attached the letter of award marked "LD 2." See page 84 of the Book.

[5] The Applicant's Attorney then indicated that he is not in a position to respond and will abide by the findings of the court on the point of law raised by the 2nd Respondent.

[6] Based on all the above mentioned considerations the Court then upheld the point of law and dismissed the Application based on the fact that the Applicant has failed to establish that it has a vested and substantial interest in the matter. It does not therefore have the legal capacity to sue. Costs at an ordinary scale were granted in favour of the 2nd Respondent. The court did indicate that the dealings between the Applicant and LCC Capital are suspect and same maybe bordering on fraud.

A handwritten signature in black ink, appearing to be 'F. Fakudze', written over a horizontal line.

FAKUDZE J.

JUDGE OF THE HIGH COURT

Applicant: M. Ndlangamandla

2nd Respondent: MTN Ndlovu