



SUPREME COURT OF APPEAL OF SOUTH AFRICA

MEDIA SUMMARY

Bokoni Platinum Mines v Abram Moropane (/1035/2019) [2020] ZASCA 168

From: The Registrar, Supreme Court of Appeal

Date: 11 December 2020

Status: Immediate

Please note that the media summary is for the benefit of the media and does not form part of the judgment of the Supreme Court of Appeal.

Today the Supreme Court of Appeal (SCA) upheld the appeal by the appellants with each party to pay its own costs.

In 2013 Bokoni Platinum Mines (Pty) Ltd (Bokoni), the appellant, commenced mining activities on Klipfontein Farm. Pursuant thereto, Bokoni concluded separate agreements with various members of the community (the farmers). Bokoni was to pay each subsistence farmer amounts of R18 000 over three years, totalling R54 000. More than a hundred farmers issued summons against Bokoni, out of the Praktiseer Magistrates Court, seeking to vindicate their rights in term of their agreements. The purported issue before this Court was whether the judgment of Magistrate Malebane, of 13 March 2017, which dismissed Bokoni's application for leave to amend its plea and counterclaim, was res judicata. If so, was it permissible for res judicata to be raised mero motu by the full bench of the Limpopo Polokwane High Court (the high court)? The high court, having raised the issue, found that the matter was res judicata and dismissed the application for leave to amend on this basis. It also refused leave to appeal. The appeal comes before this Court upon Bokoni successfully petitioning for leave to appeal.

Bokoni in its plea denied the written agreement, alternatively, it pleaded that the agreement it entered into with the individual plaintiff farmers was partly oral and partly written. The various actions were consolidated and the trial proceeded before Magistrate Malebane in 2016. Pursuant to an application for absolution at the close of the plaintiffs' case Magistrate Malebane dismissed thirteen of the actions but did not grant absolution in respect of the balance of the actions. After the testimony of one of its witnesses, Bokoni served a notice of intention to amend its plea and counterclaim, in which the written agreement was admitted. An objection was raised on the basis that Bokoni was attempting to introduce a defence not raised in its plea; that Bokoni sought to retract an allegation that the

agreement was partly oral and partly written; and, it would be highly prejudicial to the plaintiffs to grant the amendment.

Magistrate Malebane dismissed the application for leave to amend the plea and counterclaim. Bokoni lodged a notice of appeal against this decision. This was followed by Bokoni's application for the recusal of Magistrate Malebane on the grounds of bias, pertaining to the manner in which he had conducted the trial thus far. The recusal application was granted and Magistrate Malebane ordered that the matter start de novo before another magistrate. Bokoni's notice of appeal was withdrawn on the basis that the proceedings before Magistrate Malebane were 'a nullity'. Another substantive application for leave to amend the plea and counterclaim was launched, this time before Acting Magistrate Moyane in the Tubatse Magistrates Court. This application was also dismissed. Bokoni appealed Magistrate Moyane's refusal of the application for leave to amend in the high court. The appeal was dismissed by the high court which mero motu raised the issue of res judicata. The high court first considered whether Magistrate Malebane was entitled to order that the matter start de novo. It held that, as a creature of statute, Magistrate Malebane did not have that power, but because of the successful application for his recusal, the evidence had to be adduced de novo before a different magistrate. However, the high court held that the judgment of Magistrate Malebane was res judicata and the appeal was dismissed on that ground.

Although the issue identified on appeal was that of res judicata, this Court held that the high court misconstrued the enquiry. The question to be determined, in the light of Magistrate Malebane's recusal, was the status of the interlocutory judgment in which he dismissed the application for leave to amend the plea and counterclaim. This Court found that the recusal extinguished the entire proceedings, including the interlocutory judgment. To find that the recusal nullified the evidence given before Magistrate Malebane, as well as the judgment on absolution from the instance, but not the interlocutory judgment given by him, was an unsustainable proposition. Once a recusal is granted on the basis of bias this will generally infect the entire proceedings which are vitiated in their totality. The SCA held that all proceedings including the judgment of Magistrate Malebane became a nullity upon his recusal. Having made that finding, the issue of res judicata became irrelevant. With regard to the merits, it was held that the high court had not pronounced on the merits of the judgment of Acting Magistrate Moyane on the application for leave to amend the plea and counterclaim. Therefore the appropriate course of action was to remit the matter to the high court for this purpose. The appeal was upheld and the proceedings before Magistrate Malebane were set aside, including the judgment refusing leave to amend the plea and counterclaim. The matter was remitted to the full court of the Limpopo Division of the High Court to determine the merits. Each party was ordered to pay its own costs as it was not the fault of either party that the high court misconstrued the enquiry before it.