

Finality in litigation

Nugent AJA (as he then was) stated the following in the matter of Nestle (South Africa) (Pty) Limited vs Mars Inc 2001 (4)(SA) 542 (SCA):

 By Jonathan Witts-Hewinson 19 Dec 2013



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"The defence of *lis alibi pendens* shares features in common with the defence of *res judicata* because they have a common underlying principle, which is that there should be finality in litigation. Once a suit has been commenced before a tribunal that is competent to adjudicate upon it, this suit must generally be brought to its conclusion before that tribunal and should not be replicated (*lis alibi pendens*). By the same token the suit will not be permitted to revive once it has been brought to its proper conclusion (*res judicata*). The same suit between the same parties should be brought once and finally."

These principles were once again the subject of proceedings before the Supreme Court of Appeal in the recent judgment handed down in the matter between *Caesarstone Sdot-Yam Limited vs The World of Marble and Granite 2000 CC and Others*, in which a carefully considered and articulate judgment was handed down by Wallis JA. In that matter certain litigation had been initiated by *Caesarstone* in Israel. The respondents subsequently initiated proceedings in the Western Cape High Court against *Caesarstone*. Both actions arose out of the same agreement. Not all the parties, however, were participants in both sets of proceedings.

Wallis JA emphasised the important philosophy which underlies the defences referred to by Nugent JA, namely, that our courts should seek to avoid a situation where different courts pronounce on the same issue with the risk that they may reach differing conclusions.

Generally speaking, there are three requirements for a successful reliance on the plea of *lis pendens*. They are:

1. That the litigation is between the same parties;
2. That the cause of action is the same; and
3. That the same relief is sought in both sets of proceedings.

Certain of these requirements have, over the years, been tempered. In addition, as Wallis JA emphasised, a defendant can raise the plea of *lis pendens* even though it is the plaintiff in the other proceedings on which the plea is based.

The present matter was bedevilled somewhat by the fact that all the parties in the South African proceedings were not parties to the pending proceedings in Israel. Wallis JA nonetheless determined that "the only

sensible way in which to address the problem is for the court also to stay the proceedings as against the remaining [parties], not on the basis of lis pendens, but in the exercise of its inherent powers to regulate its own procedures".

The common sense approach adopted by the Supreme Court of Appeal in this matter is to be welcomed.

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