

Navigating Fraudulent Misrepresentation: Umgeni Water v Naidoo and Another (11489/2017P) [2022] ZAKZPHC 80

By **Lindelwa Magwaza** (Candidate Attorney),
checked by **Celeste Frank** (Associate) and
released by **Lindokuhle Mashilo** (Senior Associate)

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INTRODUCTION

The question of unjustified enrichment resulting from fraudulent misrepresentation by an employee to his employer was brought before the Kwazulu-Natal High Court, Pietermaritzburg in the case of Umgeni Water v Naidoo and Another (11489/2017P) [2022] ZAKZPHC 80 for adjudication. This paper will focus on the principle of voidability which the court used in order to determine the question of unjustified enrichment.

BACKGROUND

Umgeni Water ("the Plaintiff"), a bulk distributor of water in Kwa-Zulu Natal designed a graduate development program aimed at training selected graduates from universities, with the aim of retaining them upon successful completion of the program. Mr. Naidoo ("the First Defendant") applied for a position in the program. He successfully completed the program and on 1 September 2008 he was appointed as a process control technician, without the Plaintiff validating his chemical engineering qualification as purported in his application.

The First Defendant submitted a copy of his chemical engineering degree and academic results from the University of KwaZulu-Natal ("the University") in his application, secured the position and was appointed. During the course of the First Defendant's employment, the Plaintiff employed a private company to verify the qualifications of all its employees. The verification of the First Defendant's qualifications failed as it was found that the University had no record of him having graduated and obtained a degree in chemical engineering. Accordingly and in an effort to ascertain whether the First Defendant indeed held such a degree, his manager requested that he provide tangible proof of a valid degree and attendance at the University, the First Defendant failed to provide such evidence despite numerous requests.

Instead, the First Defendant maintained that he possessed a degree in chemical engineering and when he failed to provide tangible evidence to this effect, he proceeded to tender his resignation and undertook to serve his one month notice during the investigation. At this point, the Plaintiff had already instituted disciplinary proceedings against him, as such his resignation was declined pending the conclusion of the disciplinary proceedings. Surprisingly, days later the First Defendant tendered yet another resignation, this time, with immediate effect claiming he had a life-threatening condition that forced him to stop working. The Plaintiff accepted this resignation, and the First Defendant's pension fund payout was placed a hold pending determination of the First Defendant's alleged fraud in relation to his qualification given that it was requisite for one to hold a valid degree in chemical engineering in order to apply for and be appointed as a process control technician. In this case the Plaintiff sought to claim repayment of all funds it paid to the First Defendant.

COURT HELD – ZOOMING INTO THE PRINCIPLE OF VOIDABILITY

In determining this case, the Court examined whether the employment contract between the Plaintiff and the First Defendant was void or voidable. This is because the Plaintiff sought to be reinstated to its position prior to entering into the employment contract with the First Defendant due to the fact the First Defendant had benefited and was thus unjustly enriched by securing employment as a process control technician with the Plaintiff. The Plaintiff argued that the First Defendant fraudulently obtained the position of a process control technician with the Plaintiff by submitting a forged chemical engineering degree and academic records. The Plaintiff contended that had it known about the First Defendant's misrepresentation, the First Defendant would not have appointed and thus would not have received a salary from the Plaintiff over the years.

The Plaintiff argued that the contract concluded with the First Defendant was thus void ab initio on the basis that that any contract concluded by fraud is deemed void.

The Court disagreed with this assertion and indicated that contracts induced by fraud may lead to various outcomes. Such contracts could either be void or voidable at the discretion of the aggrieved party.

The Court held that the contract was voidable at the instance of the Plaintiff. The Court explained that given the circumstances, the Plaintiff entered into a contract with the First Defendant under the belief that he held the required degree from the University. However, it later transpired that the First Defendant did not possess the required degree. Had the Plaintiff been aware of this fact, it would not have entered into a contract with the First Defendant. Essentially, had the truth been known to the Plaintiff in 2008 when the First Defendant submitted his application it would not have entered into such contract. Accordingly, the Court held that the Plaintiff initially intended to enter into a contract with the First Defendant until the truth about his degree was disclosed, as such

the test for intent to contract was established which rendered the employment contract between the parties voidable at the instance of the Plaintiff not void ab initio. The court further held that one cannot benefit from his own fraudulent conduct and complain about the consequences arising from his own actions.

In the circumstance, it was found that indeed the First Defendant's qualifications were forged and thus he was unjustly enriched. The Court granted judgment in the amount of R2 203 565.04 in favour of the Plaintiff which will be executed against the First Defendant's provident fund administered by the Second Defendant. The Court further ordered the First Defendant to pay costs on the scale of attorney and client.

CONCLUSION

The case highlights the application of the principle of voidability in contracts induced by fraudulent misrepresentation. The Court determined that the contract between the Plaintiff and the First Respondent was voidable due to the First Respondent's fraudulent conduct in misrepresenting his qualifications in order to secure employment with the Plaintiff. Despite the Plaintiff's initial intention to contract with the First Respondent, the fraudulent misrepresentation that induced the Plaintiff to enter into the contract rendered the contract voidable at the Plaintiff's instance. Consequently, the court granted judgment in favour of the Plaintiff ordering restitution of funds against the First Respondent's provident fund.

Please note: Each matter must be dealt with on a case-by-case basis and you should consult an attorney before taking any action contemplated herein.



Lindokuhle Mashilo
(Senior Associate)



Celeste Frank
(Associate)



Lindelwa Magwaza
(Candidate Attorney)