

SOUTH AFRICA / JUDGMENT

Callis N.O v York (3108/2021) [2021] ZAFSHC 179 (2 August 2021)

[2021] ZAFSHC 179

COURT

Free State High Court, Bloemfontein

BEFORE

Opperman

CASE / FILE NUMBER

3108/2021

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Policy

IN THE HIGH COURT OF SOUTH

AFRICA

FREE

STATE DIVISION, BLOEMFONTEIN

Case

no: 3108/2021

In the

matter between:

JAMES

ANDREW CALLIS

N.O. Applicant

(In

his capacity as duly appointed executor

in

Estate No. [.....])

and

DEREK

YORK Respondent

IN

RE: DEREK
YORK Applicant
JAMES
ANDREW CALLIS
N.O. 1st
Respondent
in
Estate No.[.....]
MASTER
OF THE HIGH COURT BLOEMFONTEIN 2nd
Respondent

CORAM: OPPERMAN, J
HEARD

ON: 29 JULY 2021
DELIVERED
ON: 2
AUGUST 2021

JUDGMENT

[1] The matter was set down on the Unopposed Motion Court Roll on 29 July

2021. The Notice of Motion prayed for an order in the following

terms:

1. Declaring the applicant to be a lawful and valid creditor in the estate of the Late Ntau Lucas Mokoena under Estate number [.....];
 2. The 1st respondent to be directed to include the claim of the applicant with any and all other claims of creditors successfully instituted against the estate of the Late Ntau Lucas Mokoena under Estate number [.....];
 3. The 1st respondent to be interdicted from finalising and/or proceeding with the estate until written confirmation of acceptance of the claim is provided to the applicant;
 4. The costs of the application and against the 1st respondent be paid by the Estate of the Late Ntau Lucas Mokoena under Estate number [.....] on an attorney-client-scale.
 5. Further and/or alternative relief.
- [2] The applicant allegedly bona fide but erroneously called upon the respondent to, should they wish to oppose the application, file their answering affidavit in a shorter period as provided for in Uniform Rule 6(5)(d) of the Rules of this Court.
- [3] The matter became opposed and as soon as the applicants realised their mistake, they emailed a letter to the 1st respondent on 27 July 2021 at 12h29. It states:

We confirm that This Matter was never brought as an Urgent Application, but a Normal Time Frame Application.

This Matter, as per the Notice of Motion, is on the Unopposed Motion Court Roll, right from the start.

You filed a Notice to Oppose and thus it must be postponed to a Date on the Opposed Roll, as is the norm. Please provide us with a date suitable to yourself and Adv Craig Snyman. We advise that the date be arranged between Adv Cobus Buys and Adv Craig Snyman.

In terms of the Notice of Motion you were provided with the Normal Time Frames for your Notice to Oppose.

Your Opposing Affidavit must thus be filed within 15 Working Days from when you served your Notice to Oppose, which was 14/07/2021. Thus your Last Day for Filing your Opposing Affidavit is Wednesday 04/08/21. The Notice erroneously refers to 10 Working days.

Our Replying Affidavit must then be filed within 10 Working days, thus No Later than Thursday 19/08/2021.

This Matter may thus be set down for Thursday 26 August 2021.

The Date of Thursday 29/07/2021, was as normal, for if No Notice to Oppose would have been filed.

[4] The matter was called at 12h25 during the Unopposed Motion Court Roll as number 63 on the roll and Advocate Snyman handed in Concise Heads of Argument there and then on behalf of the 1st respondent. He demanded to address the court on the erroneous manner in which the matter was placed on the roll. I reminded Advocate

Snyman of the fact that it will be inappropriate for the matter to be heard on the said roll as opposed. I further drew his attention to the fact that the Court is being ambushed with the Heads of Argument and that it will be inappropriate to hear him. I pause to state that I was informed that the matter will only be postponed and that there was no need for me to prepare the case that consists of 108 pages. Advocate Snyman demanded to be heard and not to inconvenience his colleagues that were being held up in the Unopposed Motion Court by his arguments, I ordered the matter to stand down.

[5] I called on Advocate Snyman at the end of the Unopposed Motion Court Roll that consisted of no less than 79 cases and he broke into full argument. I let him continue so as not for him to have cause to protest that he did not have access to court in terms of the Constitution. The application was for the matter to be struck from the roll there and then with a punitive costs order against the applicant due to the manner in which it came before the Court.

- [6] Counsel for the applicant maintained that they request for the matter to be postponed to the Opposed Motion Court Roll. The issue raised by the 1st respondent may be heard in limine. It was also clear that Counsel for the applicant was caught off guard and not prepared for the prompt and unusual application. This caused an unfair state of affairs that cannot be condoned by the Court.
- [7] In light of the above and the fact that the 1st respondent was forewarned in the email dated 27 July 2021 that the matter is not regarded as urgent and the dies were rectified, the court as well as the applicant were ambushed by the 1st respondent during an Unopposed Motion Court Roll and with numerous Urgent Applications that were awaiting the Court's attention; I was not able to rule on the matter there and then.
- [8] Reflection of the situation cannot but direct to the conclusion that the applicants must receive an opportunity to prepare their reply to the prompt unusual form of the in limine application and that their right to constitutional access to justice was prejudiced by the conduct of the 1st respondent. The issue must be vented in due course and properly in the appropriate forum.
- [9] I therefor rule that:
1. The matter is postponed to the Opposed Motion Court Roll of 16 September 2021;
 2. The 1st respondent is granted relief to supplement their Answering/Opposing Affidavit filed on 27 July 2021, if necessary;
 3. In addition to paragraph 2 above the 1st respondent must file his ultimate Answering Affidavit, if any, on or before 24 August 2021 at 12h00;
 4. The applicant must file his Replying Affidavit, if any, on or before 7 September at 12h00;
 5. The Heads of Argument must be filed in accordance to the Directives of this Court;
 6. Costs for the 29th of July 2021 to be in the cause.

M OPPERMAN, J

APPEARANCES

On behalf of the Applicant ADVOCATE

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On behalf of the 1st Respondent

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Prepared on 12 October 2026 · Esheria