

SOUTH AFRICA / JUDGMENT

Chabane v Minister of Police (MG5/2016) [2017] ZANWHC 79 (26 October 2017)

[2017] ZANWHC 79**COURT**

North West High Court, Mafikeng

BEFORE

R D Hendricks

CASE / FILE NUMBER

MG5/2016

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Source record**IN****THE HIGH COURT OF SOUTH AFRICA****NORTH WEST DIVISION,****MAHIKENG****CASE****NO: CIV APP MG 5/2016****Not****reportable****Not****of interest to other judges****Revised.****In****the matter between:****CHABANE**
FRANS Applicant
and
MINISTER
OF
POLICE Respondent
HENDRICKS
J
DATE**OF HEARING:****14 SEPTEMBER 2017****DATE:****REQUEST FOR REASONS:****21 SEPTEMBER 2017**
DATE

OF JUDGMENT:	26 OCTOBER 2017 COUNSEL
FOR APPLICANT:	MR. LABUSCHAGNE COUNSEL
FOR THE RESPONDENT:	ADV. MONNAHELA

JUDGMENT

Introduction

- [1] The applicant approached this Court on an urgent basis praying for the following relief as set out in the Notice of Motion:

“1. That the honourable court dispose of the matter on an urgent basis dispensing with the forms and service provide for in the uniform rules of court and dispose of the matter at such time and place and in accordance with such procedure as the court deems appropriate;

2. That the court orders the stay of execution of the collection of the Respondent's allocator in this case number until the proceedings in the Magistrate court are finalised;
3. That any warrant of execution issued against the Applicant for the payment of the amount due in terms of the allocator be suspended pending finalisation of the proceedings in the Magistrate Court;
4. That the Respondent be ordered to pay the cost of this application on an attorney own-client scale alternatively on an attorney client scale alternatively on a party and party scale
5. Further and/or alternative relieve”

- [2] After listening to submissions by the respective legal representatives of the parties, this Court struck the matter from the

roll due to lack of urgency and further ordered the applicant to pay the wasted costs. An application was made for reasons for the order/judgment, which eventually find its way to my chambers. Here follows the reasons for my order/judgment.

- [3] This matter has a protracted history. The applicant instituted an action for damages in the Magistrate Court. Dissatisfied with the amount of damages awarded, the applicant appealed to the High Court; unsuccessfully though. The appeal was dismissed with costs. The respondent caused its bill of costs to be taxed. The applicant launched this application on an extremely urgent basis for an order staying execution of the collection of the Respondent's allocator and any warrant of execution. It is alleged by the applicant that he is entitled to set-off because costs were awarded in his favour in the Magistrate Court.

[4] A point in limine was raised that the application lack urgency and amounts to an abuse of the court processes. It was alleged on behalf of the respondent

that no cogent reasons were advanced as to why this matter should be treated as extremely urgent. It is common cause that the bill of costs was taxed. The taxation was unopposed. However, the Registrar of this Court did not issue any writ of execution.

[5] This was made clear by the attorneys of record acting on behalf of the respondent in a letter addressed to the applicant's

attorneys of record. It is stated in this letter that if the applicant fails to pay the costs within fourteen (14) days, a writ

will be issued against him.

[6] When this application was launched, the fourteen (14) days period had not yet lapsed and no writ of execution was issued. Therefore, there was no basis to bring this application on an extremely urgent basis because there was no indication that the property of the applicant was attached and/or due to be removed soon and/or to be sold in execution on auction.

[7] When dealing with urgency in terms of Rule 6 (12), this Court has a discretion whether or not to treat a matter as urgent.

See: Rule 6 (12) of the Uniform Rules of Court.

[8] Where the application lacks the requisite element or degree of urgency, the court can, for that reason, decline to exercise its powers under this rule. The matter is then not properly on the roll. That enables the applicant to set the matter down again on proper notice and compliance with the rules.

See: Erasmus, Superior Court Practice at page B1 – 56.

Commissioner, South African Revenue Services v Hawker Air Services (Pty) Ltd; Commissioner, South African Revenue Service v Hawker Aviation Partnership [2006] ZASCA 51; 2006

(4) SA 292 (SCA).

Vena v Vena 2010

(2) SA 248 (ECP).

[9] The applicant must not only set out explicitly the circumstances on which he relies to render the matter urgent but also the reason(s) why he cannot be afforded substantial relief at a hearing in due course.

See: Luna Meubel Vervaardigers (Edms) Bpk v Makin t/a Makin's Furniture Manufactures 1977

(4) SA 135 (W).

Salt v Smith 1991 (2) SA 186 (NM)

Cekeshe v Premier, Eastern Cape 1998

(4) SA 935 (TK).

[10] Due to the lack of urgency, this matter was struck from the roll. The merits of the application with specific reference inter alia to set-off was not dealt with and can be decided in due course by this Court. Therefore substantial relief can be obtained at a hearing in due course.

[11] It for the aforementioned reasons inter alia that I granted the order referred to in paragraph [2] above.

R D HENDRICKS

JUDGE OF THE HIGH COURT

NORTH WEST HIGH COURT, MAHIKENG

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Prepared on 9 October 2026 · Esheria