

SOUTH AFRICA / JUDGMENT

Djoufang v Snyders and Others (Reasons) (2025/105798) [2025] ZAWCHC 297 (21 July 2025)

[2025] ZAWCHC 297

COURT

Western Cape High Court, Cape Town

BEFORE

Pangarker

CASE / FILE NUMBER

2025/105798

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IN THE HIGH COURT OF SOUTH AFRICA

(WESTERN CAPE DIVISION)

Case number: 2025-105798

In the matter between:

FRIDOLAIN CHAMFORT DJOMO DJOUFANG Applicant And REGINALD DAVID SNYDERS First Respondent SPECELINE SNYDERS Second Respondent ALL OCCUPANTS OF THE PROPERTY Third Respondent MUNICIPALITY OF STELLENBOSCH Fourth Respondent SHERIFF OF THE LOWER COURT, STELLENBOSCH Fifth Respondent

Coram:

Pangarker, J

Date of hearing: 9 July 2025

Order granted: 10 July 2025

Reasons

delivered: 21 July 2025

REASONS

FOR ORDER

PANGARKER J

1. The matter came before me as an urgent application during the mid-year recess. The common cause facts from the documents filed and those placed before the Court by the Applicant which were uploaded by the First to Third Respondents, on the Court Online system but not properly filed, are the following:
 - 1.1 On 13 March 2025 the Stellenbosch Magistrates' Court granted an order against various Respondents who occupied 4[...] F[...] Street, Cloetesville, Stellenbosch, who included the First to Third Respondents in this matter.
 - 1.2 In terms of that order, the Magistrate evicted the Respondents from the aforesaid property, having found them to be unlawful occupiers as defined in the Prevention of Illegal Eviction and Unlawful Occupation of Land Act 19 of 1998 (PIE Act). The Respondents were ordered to vacate the property on or before 30 June 2025, failing which the Sheriff was authorized to evict them on 1 July 2025 or as soon as possible thereafter.
 - 1.3 Furthermore, the Sheriff of the Court (Stellenbosch) was authorized to act on the order and execute the ejectment, and the Stellenbosch Municipality was to be notified in order to make the necessary arrangements so that the Respondents could be allocated an emergency housing structure.
 - 1.4 The Respondents were present at the Magistrates' Court and the order was explained to them.
 - 1.5 No judgment was delivered as the unlawful occupation was not in dispute.
2. On 25 June 2025, the First and Second Respondents filed a document entitled "Notice of an Appeal on case 126/2024: Stellenbosch Magistrates Court". Attached to the purported Notice of Appeal was an affidavit by the First Respondent. The "Notice of an Appeal" contains various paragraphs, indicating that the Respondents wish to appeal the Magistrates' order, seeking an extension of six months to remain in the property, prohibiting the Sheriff from executing the ejectment order, seeking a revised order and sets out errors by the Magistrate. The affidavit sets out a timeline and chronology of events in the Magistrates' Court, and motivation for the Magistrates' Court to approve the appeal.
3. On 26 June 2025, the Applicant's legal representative, Ms Redelinghuys, emailed the Sheriff informing that office that the purported Notice of Appeal was defective, that the Respondents did not comply with the Magistrates' Courts Rules in noting the appeal within 20 days after the date of judgment and that the Notice did not suspend the operation of the eviction order.

4. The Sheriff was provided with the issued warrant of ejectment and requested to proceed with the eviction on 1 July 2025 as per the order. I pause to point out that on 23 June 2025, the legal representative enquired from the Stellenbosch Municipality whether it would make alternative accommodation available for the Respondents.
5. Stellenbosch Justice Centre, on behalf of the Respondents, confirmed on 24 June 2025 that some Respondents were in contact with the Municipality to secure emergency housing as they found premises upon which to secure a wendy house. The Municipality's response between 24 to 27 June 2025 was that only two of the Respondents found premises

where they could erect a wendy house which the Municipality assisted with, but that the First and Second Respondents did not reach out to the Municipality.

6. On 23 June 2025, the Respondents' legal representative was reminded of the looming eviction date and also requested to advise whether these Respondents would vacate voluntarily. On the same day, the Sheriff was provided with a copy of the Court order and requested to execute the order. Despite the correspondence from the Applicant's legal representative and being referred to authority in an email, the Sheriff refused to carry out the eviction as requested, because he believed that the purported "Notice of an appeal" suspended the operation of the 13 March 2025 order.
7. Having considered the application, and the parties' submissions, the Court was satisfied that the application was indeed urgent. Given the chronology of events as sketched above and referred to in the annexed

emails between the Applicant's and Respondents' legal representatives, the Stellenbosch Municipality and the Sherriff, it became apparent that the dual actions being the Respondents' failure to vacate the premises by late June 2025 and the Sheriff's refusal to carry out the eviction as per the Magistrate's order and the Applicant's legal representatives request, forced the Applicant's

hand. He was left with no other option but to approach this Court for relief on an urgent basis.

8. The First Respondent submitted that the Applicant makes out no case for urgency and does not explain why substantial relief cannot be obtained in the normal course. In so far as the latter requirement of Rule 6(12)(b) is concerned, it bears emphasizing that the Applicant was armed with the ejectment order which was not set aside. In view

of that order, he was entitled to have a warrant of ejectment issued in order for the Sheriff to execute the eviction. As is common place, eviction orders contain a date by when a Respondent and other unlawful occupiers are ordered to vacate, and a second date by when (or after) the Sheriff is authorized to evict them.

9. In view of the specific nature of an eviction order and warrant of ejectment, it cannot surely be reasonably contended that the Applicant could or should have waited for months in order to have the matter heard on the semi-urgent or opposed roll. In the circumstances of this matter, relief which seeks a declaration that the Respondents' Notice of 25 June 2025 is defective and directs the Sheriff to proceed on the warrant of ejectment, is urgent. Thus, the Respondents' opposition to urgency was without merit.
10. The question that required answering was whether the Notice of 25 June 2025 is a Notice of Appeal and whether it stayed the eviction order of 13 March 2025? As the order emanates from the Magistrates' Court, I have regard to the Magistrates' Courts Rules and the Magistrates' Courts Act 32 of 1944 (as amended). Rule 51 governs appeals in civil cases. Rule 51(3) states as follows:

"51 Appeals in civil cases

- (3) An appeal may be noted by the delivery of notice within 20 days after the date of a judgment appealed against or within 20 days after the registrar or clerk of the court has supplied a copy of the judgment in writing to the party applying therefor. "

[Sub-rule (3) substituted by GN R4476 of 8 March 2024 with effect from April 2024]

11. Applying the above sub-rule to the circumstances of this matter, and as read with Rule 2 which deals with the computation of days, it would mean that the period of 20 days commenced from 14 March 2025 and would have lapsed on 11 April 2025.[1] Issues of payment of security in terms of Rule 51(4) aside, the last day for the Respondents to have delivered a Notice of Appeal was 11 April 2025. As seen from the facts of the case, this did not transpire and a document purporting to be a Notice of Appeal was filed with the Clerk of the Stellenbosch Magistrates' Court on 25 June 2025.
12. As for service of the document, I shall accept in the circumstances that the Applicant's legal representatives were made aware of the Respondents' Notice. Thus, delivery of the Notice occurred on 25 June 2025, almost three months after the last day for delivery of a Notice of Appeal in terms of Rule 51(3). Clearly, the Notice, to the extent that the Respondents submit that it was a Notice of Appeal, was delivered late.
13. This raises the question as to whether the Notice was accompanied by a condonation application, as suggested by the First Respondent during his oral submissions at the hearing. In this regard, Rule 51 must be read with sections 83 and 84 of the Magistrates' Courts Act. Section 83(b) allows an aggrieved party to appeal an order which has the effect of a final judgment, and it is indeed so that the eviction

order has the effect of a final judgment or order.

14. Section 84 requires of the aggrieved party to appeal within the period and in the manner prescribed by the Rules, "but the court of appeal may in any case extend such period"[2]. The language of section 84 is peremptory, meaning that the party so appealing is bound by the time period set in the Rules. In this instance, the first time period refers to the 20 days after the Magistrate's order.
15. Civil appeals from the Magistrates' Court must comply with the Magistrates' Court Rules in respect of the time periods and procedure for noting an appeal, but the prosecution of an appeal is governed by Uniform Rule 50 as it is a proceeding in the High Court. Any failure to comply with the time-period prescribed in Rule 51(3) as in this case, may be extended by the Court hearing the appeal.[3]
16. In this matter, the Notice filed on 25 June 2025 was late and not supported by a condonation application. It was brought to this Court's attention that the Respondents were issued with an appeal case number and hearing date in September 2025 in A138/2025. It would seem that copies of these documents were uploaded onto the Court Online system and placed before the Court by the Applicant's legal representative. The Index indicates a condonation application which on the face of it, does not contain an application but only a founding affidavit by the First Respondent.
17. Be that as it may, to the extent that the Respondents filed a request or application for condonation in A138/2025, it is for the Court hearing the appeal to consider same and pronounce on condonation, not this Court.
18. As for the Notice filed on 25 June 2025, it is supported by an affidavit, which is not the correct format either. To the extent that this Court has taken note of the content of such affidavit, the first Respondent indicated at paragraphs 13 and 14 thereof that he requested reasons for the order in terms of Rule 51(1) and on 4 and 10 April 2025 respectively, but nothing was forthcoming from the Magistrate and Clerk of the Court except a verbal indication that the eviction order arose pursuant to a settlement agreement between the parties.
19. It is evident from the documents filed in this application that there is no indication of a request for reasons in terms of Rule 51(1) nor a judgment by the Magistrate; there is only an order. There is no answering affidavit to this application which is supported by a copy of any Rule 51(1) request referred to in the First Respondent's affidavit. The First Respondent prepared a "Notice of Motion (Opposing)", which the Applicant brought to the Court's attention, but which ex facie the document, was not delivered.
20. From the documents delivered, it is apparent that the Respondents elected to deliver what they thought was a Notice of Appeal. It was out of time, wrongly contained an affidavit and its delivery does not automatically suspend the Magistrate's eviction order. In terms of the common law and section 78 of the Magistrates' Courts Act, execution of an order/judgment is automatically suspended upon the noting of an appeal.[4]

21. In the circumstances of this matter, whatever may transpire in an appeal in case number A138/2025, an appeal against the Magistrate's order was not noted within 20 days after the order was granted. Furthermore, if this Court were to accept the Respondents' version in the email dated 7 July 2025 to the Chief Registrar of the High Court and to the Applicant's legal representative, that reasons for the order were requested on 4 and 10 April 2025 respectively, then it would still mean that the last date for filing of a Notice of Appeal was 11 April 2025. This is because neither of these two requests in April 2025 elicited reasons from the Magistrate for the 13 March 2025 order.
22. In the event that the Clerk of the Court had indeed supplied the Respondents with a copy of the judgment in writing, after a Rule 51(1) request, the Respondents would then have had 20 days to note an appeal by delivery of the Notice of Appeal as per Rule 51(3). Put differently, in the case of a Rule 51(1) request to the Magistrate, the 20 days commence from the date after the party intending to appeal, is provided with the Magistrate's judgment. The Magistrate is obliged to provide a judgment within 15 days of such request and is not at liberty to ignore such request nor refuse it on the basis of non-compliance.[5]
23. Having regard to what is sketched above, until a condonation application is granted by the Court of appeal in respect of the Notice delivered on 25 June 2025, such Notice is irregular, late and does not have the effect of suspending execution of the eviction order. Thus, in the absence of a proper Notice of Appeal which forms the basis upon which an appeal arises, there is therefore no valid appeal pending between the parties.
24. In these circumstances therefore, the Applicant was entitled to execute upon the warrant of ejectment as he was armed with an eviction order, and the Sheriff was authorized to act upon the warrant, which he failed to do despite the legal representative's correspondence of 26 June 2025 which alerted the Sheriff to the status of the apparent Notice of Appeal and the relevant authorities.
25. To elaborate, the legal representative of the Applicant alerted the Sheriff to the dicta in the President of the Republic of South Africa and Others v Modderklip Boerdery (Pty) Ltd (Agri SA and Legal Resources Centre, Amici Curiae)[6] which, in summary and with reference to the repealed Uniform Rule 49(11), stated that the suspension of execution of an order presupposes a valid application for leave to appeal to bring about the suspension of an order. Furthermore, in Panayiotou v Shoprite Checkers (Pty) Ltd and Others[7], Sutherland J, referring to the failure to serve Notices of Appeal and Court records timeously, confirmed with reference to Modderklip Boerdery that the result is that the appeals lapse and condonation is required to revive them.
26. Significantly, Sutherland J elaborated by stating further that:

"It is untenable that upon the service of a condonation application the judgment would then be suspended." [8]

The above principles related to the effect of delayed or late Notices of Appeal and applications for leave to appeal in High Court proceedings but apply equally to a late Notice of Appeal in a Magistrates' Court: the order sought to be appealed is not automatically suspended because a valid Notice of Appeal was not delivered. Furthermore, the delivery of a condonation application thus does not suspend the operation of the order or judgment in this instance. Condonation is indeed needed to revive a lapsed appeal.

27. In view of all the above findings, the Applicant was entitled to proceed on the warrant of ejectment and the Sheriff Stellenbosch should have proceeded to act in terms of the warrant and order. There is no application to this Court seeking a suspension of execution and/or an interdict against the Sheriff and the Applicant to prevent them from acting on the order and warrant. In the circumstances, the application for a Declarator was granted, with costs granted against

the Respondents and the Sheriff, jointly and severally, as per the Order granted on 10 July 2025, attached hereto.

M PANGARKER

JUDGE OF THE HIGH COURT

Appearances:

For Applicant:

Adv R de Wet

Instructed by:

Christo Marais Attorneys & Conveyancers

STELLENBOSCH

Per: Ms C Redelinghuys

For 1 - 3 Respondents: In person

No appearance for 4th and 5th Respondents

(WESTERN CAPE DIVISION, CAPE TOWN)

Case No. 2025-105798

HELD AT CAPE TOWN ON 9 JULY 2025

BEFORE THE HONOURABLE MS JUSTICE PANGARKER

FRIDOLAIN CHAMFORT DJOMO DJOUFANG

Applicant

And

REGINALD DAVID SNYDERS

1st Respondent

SPECELINE SNYDERS

2nd Respondent

ALL OTHER OCCUPANTS OF THE PROPERTY

3rd Respondent

THE MUNICIPALITY OF STELLENBOSCH

4th Respondent

THE SHERIFF OF THE LOWER COURT,

5th Respondent

ORDER

Having heard Counsel for the Applicant and First Respondent in person, and having read and considered the documents filed of record and the parties' submissions,

IT IS ORDERED:

1. That condonation is granted for the non-compliance with time-periods, forms and processes set out in the Uniform Rules of Court. In terms of Rule 6(12), the application is urgent.
2. That it is declared that the document titled "Notice of an appeal on case 126/2024: Stellenbosch Magistrates' Court", filed on 25 June 2025 at the Stellenbosch Magistrates' Court which purports to be a Notice of Appeal against the order granted by that Court on 13 March 2025 (the eviction order) is out of time, irregular and defective.
3. That it is declared that the operation and executability of the eviction order is not suspended.
4. The Fifth Respondent is directed to carry out the eviction of the First to Third Respondents as set out in paragraph 4 of the eviction Order as requested by the Applicant.
5. The First, Second and Fifth Respondents are ordered to pay the costs of this application, jointly and severally.

BY ORDER OF THE COURT

COURT REGISTRAR

[1] For the computation of time in terms of Rule 2, the public holiday on 21 March 2025 and weekends were excluded.

[2] Section 84 Magistrates' Court Act 32 of 1944

- [3] Section 84 Magistrate's Courts Act
- [4] Jones and Buckle: The Civil Practice of the Magistrates' Courts in South Africa. Volume 1, RS32, 2025 Act- p560; Gentiruco AG v Firestone SA (Pty) Ltd 1972(1) SA 589(A) at 667
- [5] Priem v Hilton Stuart Trust 1994(4) SA 255 (E) at 2551 -259C.
- [6] 2004(6) SA 40 SCA para [46]; see also Infusion Social Club; Camps Bay (Pty) Ltd v Camps Bay Investment Trust (Pty) Ltd and Another
- (2024) ZAWCHC 288 para [32] - [37]
- [7] 2016(3) SA 110 (GJ) para [13] – [15]
- [8] Para [15]
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Prepared on 10 October 2026 · Esheria