

SOUTH AFRICA / JUDGMENT

Ferreira and Another v Magistrate , Mr Koopman NO and Another (2448/2018) [2020] ZAECHGHC 102 (8 September 2020) [2020] ZAECHGHC 102

COURT

Eastern Cape High Court, Grahamstown

BEFORE

M.J. Lowe, J.M. Roberson

CASE / FILE NUMBER

2448/2018

Source: saflii.org · Research copy typeset by Esheria. Not court-issued or certified.

Source record

IN THE HIGH COURT OF
SOUTH AFRICA
EASTERN
CAPE DIVISION, GRAHAMSTOWN
CASE NO: 2448/2018

Date

heard: 20

August 2020

Date

delivered: 8

September 2020

In

the matter between:

IGMAR
FERREIRA
First
Applicant
ARMAND
FERREIRA
Second
Applicant
MAGISTRATE,
MR KOOPMAN NO
First
Respondent
PIETER
VAN AARDE FERREIRA
Second

Respondent

JUDGMENT

LOWE, J

INTRODUCTION

[1] This is a review of a Magistrate's decision given in terms of the return day of an interim interdict in terms of Section 3(2) of the Prevention of Harassment Act 17 of 2011 (the Act), on 14 August 2018.

[2] Applicants on review seek the following relief:

“That the Respondents and / or any interested parties hereby be summonsed to give reasons, if any, why the following findings made by the First Respondent, Magistrate Koopman, at the Magistrates Court for the District of Humansdorp, Held at Humansdorp on 14 August 2018 under case number 280/216, should not be reviewed, corrected and / or set aside on account of a the fact that the First Respondent did not consider evidence relevant and admissible to the points in limine raised by Counsel for the Applicant's and also the incorrect interpretation of the law and legal principles pertaining to urgent applications:

1.1 That the Application by the Second Respondent was in fact urgent at the relevant time;

1.2 That the First Respondent, Magistrate Koopman, cannot embark upon the consideration of the merits to determine the causa of the application; and

1.3 That the founding affidavit by the Second Respondent indeed disclosed:

1.3.1 Urgency; and

1.3.2 “Harassment” including “Harm” as defined in Act 17 of 2011 (‘the Act’);

1.4 That the First and Second Applicants' firearms should not be returned to them and in the event that the First Respondent does make an order in this regard, it would make piecemeal of the Interim Orders Granted on 14 December 2016.

2. That Respondents be ordered to pay the costs of this application, jointly and severally, the one paying the other to be absolved, on an attorney and client scale, only if this application is opposed.”

[3] The matter was opposed by Second Respondent who sought that the “Application” be dismissed with costs.

[4] To place the matter in context a brief summary of the proceedings leading up to the rule nisi issued in terms of the Act is as follows.

- [5] The parties have considerable history which is set out in the application brought in terms of the Act. In April 2015 First Applicant alleges having been informed of death threats allegedly made against Second Respondent by First Applicant. On 1 November 2016, following a bar fight allegedly involving First Applicant, Applicants (in a vehicle) allegedly chased Second Respondent in his vehicle, ramming his vehicle thrice. Hence the bringing of the application.
- [6] It should be emphasized that the alleged basis of the Review relates to the suggestion that the Magistrate failed to consider evidence raised in respect of the points in limine raised and argued and the “incorrect interpretation” of the law pertaining to “urgent applications”.
- [7] This apparently related to the consideration, on the extended return day, of the order granted on 14 December 2016 by Magistrate Van Zyl, initially returnable on 18 January 2017 (typographically said to be 18 January 2016 – a clear patent typographical error).
- [8] The return day was extended from time to time to the hearing of this matter on 13 August 2018, but which was not finally concluded on that date going through to the following day, 14 August 2018, and thereafter extended for a further six months to 14 February 2019.
- [9] To say the least the founding affidavit, by First Applicant in the review, is confused and confusing, the basis of the review being difficult to discern therefrom but would appear to go to lack of urgency; that Applicants were not in the Republic on the date of the first incident in April 2015, and that the Magistrate erred on the return day in “holding that he could not go into the merits of the case”. It is also suggested that in respect of the “second incident” there was no allegation of harassment (the bar fight), and that the first incident rested on hearsay evidence.
- [10] What is clear is that in summary on the return day, having not as yet filed any affidavits in answer, Applicants took various points in limine arguing that on this basis the interim order should be discharged. An application for return of the firearms confiscated from Applicants in the initial order also being made and refused.
- [11] The record of proceedings and argument before us made it clear that:
- [11.1] At the commencement of the proceedings when the Magistrate was asked, in the absence of answering affidavits, to confirm the rule, the Magistrate informed all that he would be willing to hear viva voce evidence in opposition.
- [11.2] Applicants took the point that they were not obliged to respond prior to the return day, and that in any event the order did not comply with Section 3(c) of the Act not calling on Applicants to show cause on the return day why the interim order should be made final.
- [11.3] In fact the full court order issued indeed called for a response by Respondent on 18 January 2017, and reflected the correct date of the return day.

[11.4] Senior Counsel for Applicants asked the Magistrate at the commencement of proceedings forthwith simply to dismiss the interim order.

[11.5] Upon the Magistrate (correctly) declining to do so Applicants did not take up the invitation to give viva voce evidence, or hand in affidavits, but took various points in limine that the application had not been urgent and did not fall within the definition of “harassment” in the Act, amongst others.

[11.6] At the end of the day on 13 August 2018 the matter stood over to the following day, the record reading: “Hof verdaag tot more oggend”, resuming on 14 August 2018 with the Magistrate’s rulings being given, with reasons.

[11.7] The Magistrate dismissed the issues in limine raised in argument, with reasons, in each instance.

[11.8] Applicants’ Senior counsel then sought that the matter be postponed sine die in order that Applicants could launch review proceedings in the High Court, suggesting that the finding on “urgency” was final and subject to review. The Magistrate then postponed the matter to 15 February 2019 extending the rule.

[12] In argument it was accepted by both sides that the proceedings had not yet finally terminated (but for the rule nisi lapsing argument) and would have to proceed on the merits (as per the return day of the interim order) in the face of the dismissal of the points in limine, were this Court not to intervene as sought by Applicants.

[13] It was also argued for Applicants that the rule had lapsed automatically, not being “extended” by the Magistrate at the end of the day on 13 August 2018, and that this was in any event the end of the matter. This point was not raised on the Review papers being, it would seem, an afterthought by Applicants.

REVIEW OF PROCEEDINGS IN MAGISTRATES’ COURTS

[14] Section 22 of the Superior Courts Act 10 of 2013 deals with the grounds upon which the proceedings of a Magistrate’s Court may be reviewed whilst Rule 53 lays down the relevant procedure.

[15] The stage when this may be done will be dealt with below and, in summary, generally a High Court will be reluctant to review incomplete

proceedings in a Magistrate’s Court[1].

[16] This is so unless the review Applicant can show grave injustice would otherwise result, or whether justice would not be attained by any other means.

[17] Further if the complaint is against the result of the proceedings in a Magistrate’s Court, appeal is the remedy, if against the method, review is the remedy[2].

[18] If review proceedings are correctly brought, as opposed to appeal proceedings, and are launched at an appropriate stage of the proceedings, the provision of Section 22 of the Superior Courts Act are of application which reads as follows:

“22 Grounds for review of proceedings of Magistrates’ Court [sic]

- (1) The grounds upon which the proceedings of any Magistrates’ [sic] Court may be brought under review before a court of a Division are —
 - (a) absence of jurisdiction on the part of the court;
 - (b) interest in the cause, bias, malice or corruption on the part of the presiding judicial officer;
 - (c) gross irregularity in the proceedings; and
 - (d) the admission of inadmissible or incompetent evidence or the rejection of admissible or competent evidence.
- (2) This section does not affect the provisions of any other law relating to the review of proceedings in Magistrates’ Courts.”

REVIEW IN MEDIAS RES

[19] What seems to have been overlooked by Applicants is that this review is one in medias res.

[20] In *Motata vs Nair NO and Another*

[3] the following was stated by Hancke and Pickering JJ, relevant to reviews in medias res:

*“[9] It is trite that as a general rule a High Court will not by way of entertaining an application for review interfere with incomplete proceedings in a lower court. As stated in *Wahlhaus & others v Additional Magistrate, Johannesburg & another* 1959 (3) SA 113 (AD) at 119G, the High Court will not ordinarily interfere whether by way of appeal or review before a conviction has taken place in the lower court even if the point decided against the accused by a magistrate is fundamental to the accused's guilt. At 119H–120A *Ogilvie Thompson JA* (as he then was) stated as follows:*

‘It is true that, by virtue of its inherent power to restrain illegalities in inferior courts, the Supreme Court may, in a proper

case, grant relief – by way of review, interdict, or mandamus – against the decision of a magistrate's court given before conviction. (See *Ellis v Visser and Another* 1956 (2) SA 117 (W) and *R v Marais* 1959 (1) SA 98 (T), where most of the decisions are collated.) This, however, is a power which is to be sparingly exercised. It is impracticable to attempt any precise definition of the ambit of this power; for each case must depend upon its own circumstances. The learned authors of *Gardiner and Lansdown* (6th Ed., vol. I p.750) state:

'While a Superior Court having jurisdiction in review or appeal will be slower to exercise any power, whether by mandamus or otherwise, upon the uninterminated course of proceedings in a court below, it certainly has the power to do so, and will do so in rare cases where grave injustice

might otherwise result or where justice might not by other means be attained . . . In general, however, it will hesitate to intervene, especially having regard to the effect of such a procedure upon the continuity of proceedings in the court below, and to the fact that redress by means of review or appeal will ordinarily be available.'

In my judgment, that statement correctly reflects the position in relation to unconcluded criminal proceedings in the magistrate's court."

At 120D, the learned Judge continued:

"[T]he prejudice, inherent in an accused's being obliged to proceed to trial, and possible conviction, before he is accorded an opportunity of testing in the Supreme Court the correctness of the magistrate's decision overruling a preliminary, and perhaps a fundamental, contention raised by the accused, does not per se necessarily justify the Supreme Court in granting relief before conviction. (See too the observation of Murray J at pp 123–124 of *Ellis* case supra.) As indicated earlier, each case falls to be decided on its own facts and with due regard to the salutary general rule that appeals are not entertained piecemeal."

[10] In *Ismail & others v Additional Magistrate, Wynberg & Another* 1963 (1) SA 1 (A) the following was stated at 5H–6A:

"I should point out that it is not every failure of justice which would amount to a gross irregularity justifying interference before conviction. As was pointed out in *Wahlhaus and Others v Additional Magistrate, Johannesburg and Another* 1959

(3) SA 113 (AD) at p119, where the error relied upon is no more than a wrong decision, the practical effect of allowing an interlocutory remedial procedure would be to bring the magistrate's decision under appeal at a stage when no appeal lies. Although there is no sharply

defined distinction between illegalities which will be restrained by review before conviction on the ground of gross irregularity, on the one hand, and irregularities or errors which are to be dealt with on appeal after conviction, on the other hand, the distinction is a real one and should be maintained. A Superior Court should be slow to intervene in untermiated proceedings in the court below, and should, generally speaking, confine the exercise of its powers to 'rare cases where grave injustice might otherwise result or where justice might not by other means be attained.' (*Wahlhaus's* case, supra at p120)."

[21] In *Wahlhaus and Another v The Additional Magistrate, Johannesburg* supra the following was stated at page 119:

“If, as appellants contend, the magistrate erred in dismissing their exception and objection to the charge, his error was that, in the performance of his statutory functions, he gave a wrong decision. The normal remedy against a wrong decision of that kind is to appeal after conviction... Nor, even if the preliminary point decided against the accused by a magistrate be fundamental to the accused’s guilt, will a Superior Court ordinarily interfere – whether by way of appeal or review - before a conviction has taken place in the inferior court.”

[22] Also at 119 the court continued:

“[B]y virtue of its inherent power to restrain illegalities in inferior courts, the Supreme Court may, in a proper case, grant relief – by way of review, interdict or mandamus – against the decision of a magistrate’s court before conviction. (See Ellis v Visser and Another 1956 (2) SA 117 (W), and R v Marais 1959 (1) SA 98 (T), where most of the decisions are collated.) This, however, is a power which is to be sparingly exercised ...”

[23] In *Mispha CC and Another v The Honourable Regional Magistrate and Others* [4], I for the Full Bench held as follows as to Review in medias res:

“[46] Against this background our Courts are extremely reluctant to interfere with or allow the review of proceedings not yet completed in an inferior court. It has been said that a court will only do so in exceptional circumstances where serious injustice will otherwise result or when justice cannot be achieved in any other way. Wahlhaus and Others v Additional Magistrate, Johannesburg 1959 (3) SA 113 (A) at 119H – 120C; Building Improvements Finance Co (Pty) Ltd (supra) at 793F – 794A; R v Marais 1959 (1) SA 98 (T) at 101H; Van Tonder v Kilian NO 1992 (1) SA 67 (T) at 74D-I; Nourse v Van Heerden 1999 (2) SACR 198(W); S v The Attorney-General of the Western Cape, S v The Regional Magistrate, Wynberg 1999 (2) SACR 13(C).

[47] The principle that a High Court will be slow to review uncompleted criminal proceedings is well illustrated in *Wahlhaus* (supra) where the following appears:

“Nor, even if the preliminary point decided against the accused by a magistrate be fundamental to the accused’s guilt, will a Superior Court ordinarily interfere – whether by way of appeal or by way of review – before a conviction has taken place in the inferior court. (See Lawrance v A.R.M. of Johannesburg, 1908 TS 525, and Ginsberg v Additional Magistrate of Cape Town, 1933 CPD 357). In the former of these two cases INNES, C.J., said at p. 526:

“This is really an appeal from the magistrate’s decision upon the objection, and we are not prepared to entertain appeals piecemeal.

If the magistrate finds the applicant guilty, then let him appeal, and we shall decide the whole matter”.

It is true that, by virtue of its inherent power to restrain illegalities in inferior courts, the Supreme Court may, in a proper case, grant relief – by way of review, interdict, or mandamus – against the decision of a magistrate’s court given before conviction. (See *Ellis v Visser and Another*, 1956 (2) SA 117 (W), and *R. v Marais*, 1959 (1) SA 98 (T), where most of the decisions are collated). This, however, is a power which is to be sparingly exercised. It is impracticable to

attempt any precise definition of the ambit of this power; for each case must depend upon its own circumstances. The learned authors of Gardiner and Lansdown (6th ed., vol. I p.

750) state:

‘While a superior court having jurisdiction in review or appeal will be slow to exercise any power, whether by mandamus or otherwise, upon the uninterminated course of proceedings in a court below, it certainly has the power to do so, and will do so in rare cases where grave injustice might otherwise result or where justice might not by other means be attained. . . . In general, however, it will hesitate to intervene, especially having regard to the effect of such a procedure upon the continuity of proceedings in the court below, and to the fact that redress by means of review or appeal will ordinarily be available.’

In my judgment, that statement correctly reflects the position in relation to unconcluded criminal proceedings in the magistrates’ courts. I would merely add two observations. The first is that, while the attitude of the Attorney-General is obviously a material element, his consent does not relieve the Superior Court from the necessity of deciding whether or not the particular case is an appropriate one for intervention. Secondly, the prejudice, inherent in an accused’s being obliged to proceed to trial, and possible conviction, in a magistrate’s court before he is accorded an opportunity of testing in the Supreme Court the correctness of the magistrate’s decision overruling a preliminary, and perhaps fundamental, contention raised by the accused, does not per se necessarily justify the Supreme Court in granting relief before conviction (see too the observation of MURRAY, J., at pp. 123-4 of Ellis’ case, supra). As indicated earlier, each case falls to be decided on its own facts and with due regard to the salutary general rule that appeals are not entertained piecemeal.” (At 119 F – 120 D)

...

[49] In *Adonis v Additional Magistrate, Bellville and Others* 2007

(2) SA 147 (C) at paragraphs [21] and [22] the following appears:

“[21] It is generally accepted that this Court will not readily intervene in lower court proceedings which have not yet terminated, unless grave injustice may otherwise result or where justice may not be obtained by other means. See Wahlhaus and Others v Additional Magistrate, Johannesburg and Another 1959 (3) SA 113 (A) at 119H – 120C; Ismail and Others v Additional Magistrate, Wynberg, and Another 1963 (1) SA 1 (A) at 5G – 6A; Building Improvements Finance Co (Pty) Ltd v Additional Magistrate, Johannesburg, and Another 1978 (4) SA 790 (T) at 793F – G; Levack and Others v Regional Magistrate, Wynberg, and Another 1999 (4) SA 747 (C) (1999 (2) SACR 151; [1999] 3 All SA 374) at 754A – F (SA).

[22] Intervention on review will be justified in the case of a gross irregularity which has caused, or is likely to cause, prejudice to the applicant. See the *Building Improvements* case (supra) at 792H – 793C. In *Rynders v Bankorp Ltd t/a Trust Bank and Others* 1995

- (2) SA 494 (W) it was held that a magistrate's court did not have the power to grant an ex parte application for the provisional liquidation of a close corporation. According to MacArthur J (at 497B – D) the grant of such an order constituted an irregularity which caused the applicant 'substantial wrong' in that he was confronted with all the consequences of a provisional liquidation order. This entitled the applicant to take the magistrate's decision on review, despite the fact that he might have failed to exhaust his remedies in the magistrate's court."

[24] In *Van Tonder v Kilian NO and Another*

- [5] the facts are well summarised in the headnote as follows:

"The applicant stood trial in a regional court on a charge of culpable homicide, arising out of a motor vehicle collision in which two people were killed. The State alleged that the accident was caused by the applicant's negligence as he had driven on the wrong side of the road at an inopportune moment and that the collision had taken place there. The applicant, who denied

being negligent and also denied that the collision had taken place on his wrong side of the road, intended to call an expert witness who would, as a result of conducting certain investigations, testify that the accident had probably occurred on the applicant's

side of the road. This expert drew up certain maps and charts and, when the applicant's counsel attempted to put the contents thereof to a State witness, the State argued that it did not admit the points or measurements on the maps. The presiding

magistrate (first respondent), despite being informed by the defence that they intended calling the expert witness to testify in respect of the sketches and charts, ruled that cross-examination on the documents would not be allowed as the documents had not been properly placed before the court. When a further State witness, one S, who had been the driver of another motor vehicle involved in the collision and who had sued the applicant in a civil action for damages, testified, the applicant wished to show that S had alleged a contradictory version of how the accident had happened in his pleadings, and accordingly wished to refer to such pleadings and if necessary hand them in as exhibits. The court a quo refused this request as well, ruling that the pleadings had not been properly certified. The applicant thereupon brought the instant application for the review and setting aside or correction of the rulings made by the first respondent."

- [25] The court on review held that the Magistrate had committed a misdirection which had materially prejudiced Applicant in the continuation of the trial which could not after conviction be corrected on review or appeal. The rulings were thus set aside in an interim review. The court having considered *Wahlhaus* (supra) held as follows:

"Ek is die mening toegedaan dat hierdie Hof nou moet inmeng. My redes is die volgende:

1. Die voortsetting van die verweerder se saak, soos ek gesê het, word gekniehalter as gevolg van 'n wanopvatting van die betrokke gesag en prosesreg.

2. Dit moet oorweeg word of die onreëlmatigheid na 'n moontlike skuldigbevinding op hersiening of appèl gekorrigeer kan word. In casu kan dit nie; indien die verhoor op die vertolking van die hof a quo hervat word, sal die applikant se getuies, eers moet getuig voor die betrokke Staatsgetuies gekruisvra word, met die gepaardgaande benadeling. Inding die applikant nie die dokumentasie aan die Staatsgetuies stel nie, sal hy nie sy pligte, waarna in *Smith v Small* (supra) verwys word, nakom nie. Indien die applikant die reëlins aanvaar en as gevolg van die wanvoorligting nie sy getuies roep nie, bestaan die risiko dat op hersiening na skuldigbevinding die hof nie in 'n posisie sal wees om die wesenlikheid van die benadeling te kan oorweeg nie.
 3. In hierdie saak bestry die Prokureur-generaal nie die meriete van hierdie aangeleentheid nie en namens die eerste respondent word dit nou ook nie bestry nie. Geen betoë in verband met die meriete word voorgelê nie. In 'n neutedop en in die lig van die omstandighede van hierdie saak kan die betrokke advokate – heeltemal tereg – nie die reëlins of besluite van die eerste respondent ondersteun nie.
 4. Die wanvoorligting is nie net op 'n voorlopige of interlokutêre punt van toepassing nie. Dit tref die kern van die voortsetting van die applikant se saak en sy regte as beskuldigde word in 'n wesenlike mate tot niet gemaak.
 5. In al die omstandighede van hierdie saak sal dit verkeerd en gekunsteld wees om die gevolge van gemelde wesenlike wanvoorligting nie nou te korrigeer nie.” (At 74H – 75E)”
- [26] The question of review in medias res must be considered against such grave injustice as may result were we not to intervene at this stage, such as to materially prejudice Applicants which could not, in due course, be corrected on review or appeal.
- [27] In my view, no exceptional circumstances have been demonstrated to exist in this matter which would lead to serious injustice arising or which, if in fact justifying same, cannot be rectified in due course. Further and in any event, on what is before us, I am far from persuaded that any of the grounds referred to in Section 22 of the Superior Courts Act are in any way satisfied to say the least.
- [28] In summary from what has been set out above, and that raised on the papers in this review, not only is a Review impermissible at this stage in medias res, but such as is advanced in this matter constitutes, at best, grounds for appeal in due course, not review, and in any event does not fall within Section 22 of the Superior Courts Act at all. The points raised go not to the method of the proceedings but to the result thereof, and will be matter for appeal in due course and not review.
- [29] Any of the issues raised above would, each on its own be sufficient to justify dismissal of the Application.

THE EXTENSION OF THE RULE NISI ISSUE

- [30] Applicants' argument that the rule lapsed on 13 August 2018, not having been extended at the end of proceedings on 18 August 2018 (being incomplete and standing over to the next day to continue), was persisted in both parties, at the Court's invitation, filing further heads in this regard.
- [31] This is simply dealt with and is an argument, subsequently conceived, with little merit.
- [32] A rule nisi is an order that will come into effect at a particular time in the future unless a particular condition is met, usually that on adversely affected party providing sufficient evidence or argument that the decree should not take effect. If the condition is not met the rule becomes final or absolute.
- [33] It is so that a rule nisi must have a return day relevant to the condition imposed.
- [34] In this matter the rule called upon Applicants to show cause, on the return day, why the order should not be made final.
- [35] The rule was however, in this matter, the subject matter of the proceedings and its postponement had the automatic effect of extending the life of the rule itself.
- [36] As held in *Crundall Brothers (Pvt) Ltd v Lazarus NO and Another*
- [6] the postponement of a rule nisi automatically effects the extension of the return day of the rule. The relief is provided by the rule and were it to be held to have lapsed (if not expressly extended) would render the postponement nugatory as there would be no rule to confirm on the postponement date.
- [37] In my view, the authorities referred to by Applicants' Senior Counsel do not in any way hold the contrary in the circumstances of this matter. Indeed in *Ndunge v Ubuhlebezwe Municipality*[7] the Court specifically distinguished that matter from *Crundall Brothers*[8].
- [38] It is so that where an interim order is not confirmed the application is effectively dismissed[9]. This is however irrelevant to the outcome of this matter.
- [39] In any event, in the circumstances of this matter the return day of the rule arrived on 13 August 2018. In point of fact the matter was called and the proceedings continued into a second day. Quite apart from the *Crundall* argument above, in my view, and in any event the return day encompassed both 13 and 14 August 2018, it being wholly unnecessary for the Magistrate to say a word about the extension of the rule until the finalisation of proceedings on the second day thereof. The 14 August was part of the proceedings which commenced the previous day and it was in any event clear that the rule stood pending the termination of the argument and order.
- [40] In the circumstances:
- [40.1] The rule nisi having lapsed argument fails on either ground referred to above.

[40.2] The argument in any event falls at the in medias res hurdle and is in any event a matter for appeal not review.

THE FIREARMS ISSUE

- [41] In terms of Section 10(3)(a)(i) and 12 of the Act the Court may order that the South African Police Service seize any weapon in the possession, or under the control, of a Respondent directing that the record of proceedings be referred to the National Police Commissioner for consideration in terms of the Firearms Control Act, 60 of 2000.
- [42] The Firearms Control Act deals with the declaration of a person as unfit to possess a firearm in the event of a final protection order having been issued in terms of the Protection from Harassment Act 17 of 2011[10].
- [43] Clearly then this aspect of the matter is similarly subject to the finalisation of the Harassment Act proceedings and it was not open to the Magistrate to set aside the order, save and unless he set aside the Rule nisi, which is not yet the case.
- [44] For the same reasons as referred to above there is no basis laid for this Court intervening at this stage in medias res let alone on the basis alleged from a merits point of view, this being linked to a final consideration of the interim harassment order in due course.

COSTS

- [45] There is no reason why costs should not follow the result.

ORDER

- [46] The review is dismissed with costs.

M.J. LOWE

JUDGE OF THE HIGH COURT

ROBERSON, J:

I agree.

J.M. ROBERSON

Appearances:

Obo Applicants: Adv J. Engelbrecht SC

Instructed by: AC Morgan & Associates, Jeffrey's Bay c/o Netteltons Attorneys, Grahamstown

Obo Second Respondent: Adv P.E. Jooste

Instructed by:

Messrs Mpayana Ledwaba, Pretoria c/o Mabece Tilana Inc., Grahamstown

[1] Motata v Nair & Another 2009

(2) SA 575 (T) 578 H-I.

[2] Snyders v De Jager 2016

(5) SA 218 (SCA) 222 F-J.

[3]

[2008] ZAGPHC 215; 2009

(1) SACR 263 (TPD) at paragraphs 9 and 10

[4] Case No.: 2647/2011, 15 August 2013, ECD Grahamstown (delivered on 18 September 2013).

[5] 1992

(1) SA 67 (T)

[6] 1991

(3) SA 812 (ZH)

[7] [2019] JOL 4995 (KZP)

[8] Paragraph 10.

[9] MV Snow Delta Serva Ship Ltd v Discount Tonnage Ltd 2000

(4) SA 746 (SCA)

[10] Section 102.

Source & reproduction note

Judgment wording, source notices and original paragraph numbers are retained. Esheria supplies the layout and this PDF's page numbers; these are not the source pagination. This is a research copy, not an official or certified court document. Check quotations, citations and publication restrictions against the original source before relying on it.

ORIGINAL SOURCE <https://www.saflii.org/za/cases/ZAECGHC/2020/102.html>

CASE PAGE <https://chat.esheria.ai/case-law/south-africa/ferreira-and-another-v-magistrate-unknown-topic-aecghc-2020>

Prepared on 10 October 2026 · Esheria