

SOUTH AFRICA / JUDGMENT

Frehton v University of Limpopo Senate and Others (HCAA31/2024) [2024] ZALMPPHC 191 (27 November 2024) [2024] ZALMPPHC 191

COURT

Limpopo High Court, Polokwane

BEFORE

M. Naude-Odendaal, K. Pillay, M.Z. Makoti

CASE / FILE NUMBER

HCAA31/2024

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IN

THE HIGH COURT OF SOUTH AFRICA

(LIMPOPO

DIVISION, POLOKWANE)

CASE

NO: HCAA31/2024

(1)

REPORTABLE: YES/NO

(2)

OF INTEREST TO THE JUDGES: YES/NO

(3)

REVISED: YES/NO

SIGNATURE:

Naude-Odendaal J

DATE:27/11/2024

In

the matter between:

RAMOKGOPA
MODITSA FRECTON
APPELLANT
and
UNIVERSITY
OF LIMPOPO, SENATE
1st RESPONDENT
UNIVERSITY
OF LIMPOPO
2nd RESPONDENT
REGISTRAR
OF THE UNIVERSITY OF LIMPOPO
3rd RESPONDENT

JUDGMENT

NAUDE-ODENDAAL J:

[1] This is an appeal against the judgment and order of the High Court dismissing an application in terms of Section 18(3) of the Superior Court's Act, 10 of 2013 on 28 June 2024.

[2] The background facts are succinctly as follows:-

2.1 The Appellant launched an urgent application in terms of Rule 6(12) of the Uniform Rules of Court, seeking an order in terms of which the Senate of the University of Limpopo is ordered to permit him to register only one module towards the completion of Bachelor of Laws (LLB) Degree, instead of ten modules as he in terms of the old curriculum only had one module outstanding. The order was granted in favour of the Appellant on 13 February 2024.

2.2 The University filed an application for leave to appeal the order that was granted on 13 February 2024. The Appellant then proceeded to launch an application in terms of Section 18(1) read with Section 18(3) of the Superior Courts Act, 10 of 2013, in terms whereof the Appellant applied that the operation and execution of the Judgment and Order dated 13 February 2024, be implemented pending a decision of the Respondents' application for leave to appeal and in the event leave to appeal is granted, the outcome of such appeal.

2.3 The court a quo dismissed the application in terms of Section 18(3) of the Superior Courts Act, 10 of 2013 on 28 June 2024 with no order as to costs. It is this judgment and order that is the subject of this appeal.

2.4 The Appellant then proceeded to note an appeal in terms of Section 18(4) of the Superior Courts Act, 10 of 2013 against the 28 June 2024 judgment and order. The Appeal is opposed by the Respondents.

[3] Section 18 of the Superior Courts Act, 10 of 2013 stipulates as follows:-

"18. Suspension of decision pending appeal

- (1) Subject to subsections (2) and (3), and unless the court under exceptional circumstances orders otherwise, the operation and execution of a decision which is the subject of an application for leave to appeal or of an appeal, is suspended pending the decision of the application or appeal.
- (2) Subject to subsection (3), unless the court under exceptional circumstances orders otherwise, the operation and execution of a decision that is an interlocutory order not having the effect of a final judgment, which is the subject of an application for leave to appeal or of an appeal, is not suspended pending the decision of the application or appeal.
- (3) A court may only order otherwise as contemplated in subsection (1) or (2), if the party who applied to the court to order otherwise, in addition proves on a balance of probabilities that he or she will suffer irreparable harm if the court does not so order and that the other party will not suffer irreparable harm if the court so orders.
- (4)
 - (a) If a court orders otherwise, as contemplated in subsection (1)-
 - (i) the court must immediately record its reasons for doing so;
 - (ii) the aggrieved party has an automatic right of appeal to the next highest court;
 - (iii) the court hearing such an appeal must deal with it as a matter of extreme urgency; and
 - (iv) such order will be automatically suspended, pending the outcome of such appeal.
 - (b) 'Next highest court', for purposes of paragraph (a)(ii), means-
 - (i) a full court of that Division, if the appeal is against a decision of a single judge of the Division; or
 - (ii) the Supreme Court of Appeal, if the appeal is against a decision of two judges or the full court of the Division.

[S 18(4) substituted by s. 29 of Act 15 of 2023 with effect from 3 April 2024.]

- (5) For the purposes of subsections (1) and (2), a decision becomes the subject of an application for leave to appeal or of an appeal, as soon as an application for leave to appeal or a notice of appeal is lodged with the registrar in terms of the rules." (Own emphasis added)
- [4] From a plain reading of Section 18, it is clear that an order which is the subject of an appeal is suspended and only if a court orders otherwise, ie. that the order be implemented pending the appeal, does the aggrieved party have an automatic right of appeal.
- [5] In the present matter, the Court a quo did not order otherwise ie. that the order be implemented but instead dismissed the application in terms of Section 18(3) and the Appellant cannot be described as an aggrieved party as intended in terms of Section 18(4)(a)(ii), as the Court a quo did not order otherwise. The application was dismissed.

- [6] In the result, the Appellant cannot rely on Section 18(4)(a)(ii) of the Superior Courts Act and an automatic right of appeal. In this court's view, the Appellant misinterpreted Section 18(4) when it approached this court on the basis that he has an automatic right of appeal, which in the circumstances he does not have. In the result, the appeal stands to be dismissed.
- [7] Even if the above approach and interpretation is incorrect, the Appellant failed to show in the Court a quo that there exist exceptional circumstances warranting the operation and execution of the judgment and order pending the outcome of the appeal.
- [8] Furthermore, the Appellant also failed to prove on a balance of probabilities that he will suffer irreparable harm if the Court does not so order and the other party will not suffer irreparable harm if the Court so orders. To the contrary, the Appellant has been invited by the Respondents to come and register and finish his degree, which
- the Appellant simply chose not to do, but rather to embark on this path of litigation.
- [9] The Appellant should simply go and register and finish his degree as agreed to by the University and therefore will not suffer any irreparable harm. This Court cannot find that the Court a quo misdirected itself in facts or in law. The Court a quo correctly found that the Appellant failed to discharge his onus to prove on a balance of probabilities, that the Respondents will not suffer any irreparable harm if the execution of the order is not suspended.
- [10] Whether or not exceptional circumstances exist is not a decision which depends on the exercise of a judicial discretion - their existence or otherwise is a matter of fact which the Court must decide accordingly. In this Court's view, the Appellant simply restated already pre-existing circumstances and no exceptional circumstances. In this Court's view, the Court a quo was correct in dismissing the application and in the result also on this score, the appeal stands to be dismissed.
- [11] Accordingly, this Court therefore makes the following order:-

1. The appeal is dismissed with costs.

M. NAUDE-ODENDAAL

JUDGE OF THE HIGH COURT,

LIMPOPO DIVISION

POLOKWANE

I AGREE:

K. PILLAY

ACTING JUDGE OF THE HIGH COURT,

M.Z. MAKOTI

LIMPOPO DIVISION,

APPEARANCES:

HEARD ON:

25 OCTOBER 2024

JUDGMENT

DELIVERED ON: 27 NOVEMBER 2024

For the Appellant: Ramakgopa Moditsa Frecton (In person)

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For the Respondents: Adv. J.D. Mphahlele

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