

SOUTH AFRICA / JUDGMENT

G.P.N v C.M.N (Review) (HC 07/2025)

[2025] ZANWHC 56 (17 March 2025)

[2025] ZANWHC 56

COURT

North West High Court, Mafikeng

BEFORE

Titus, Djaje

CASE / FILE NUMBER

HC 07/2025

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IN THE HIGH COURT OF SOUTH AFRICA

(NORTH WEST DIVISION, MAHIKENG)

High Court Ref No: HC 07/2025

Magistrate's Serial No: 03/2025

Reportable: YES / NO

Circulate to Judges: YES / NO

Circulate to Magistrates: YES / NO

Circulate to Regional Magistrates: YES / NO

In the matter between:

G[...] P[...] N[...]

Applicant

and

C[...] M[...] N[...]

Respondent

Coram: Titus AJ and Djaje DJP

Received: 6 March 2025

Delivered: 17 March 2025

ORDER

It is ordered that:

1. The formal maintenance enquiry at the Maintenance Court, Tlhabane, under file number 000470/2023/906 is hereby reviewed and set aside, including the interim maintenance order dated 8 April 2024.
2. The Clerk of the Court, Tlhabane is directed to subpoena the parties to the maintenance proceedings to Court so that the Presiding Magistrate may inform them of the outcome of this Review.
3. The maintenance proceedings be heard before another Magistrate.
4. A copy of this judgment is to be brought to the attention of the Chief Magistrate, North West Province.
5. A copy of the judgment is to be brought to the attention of the Legal Practice Council (Professional Affairs).

REVIEW JUDGMENT

TITUS, AJ

Introduction

- [1] The review application in this matter came before me on 6 March 2025 at the request of the Senior Magistrate, Tlhabane, C G Becker, with a request to review the proceedings in the matter.
- [2] The basis of the application is an allegation that Mr Willem Butinyane Matheolwane ('Matheolwane') who appeared for the respondent in the maintenance proceedings had no right of appearance at the relevant times.
- [3] The covering letter from the Senior Magistrate, dated 24 February 2025, reads as follows:

"CASE SUBMITTED FOR SPECIAL REVIEW:

Matter between G[...] P[...] N[...] and C[...] M[...] N[...]

File Number: 000470/2023/906 – Maintenance Matter

1. Request to have the case reviewed.
2. The proceedings in the abovementioned case are not reviewable.

3. The abovementioned Matter is enclosed herewith for the attention of a Honourable Reviewing Judge as matters deserving of special review according to Section 22(c) of the Superior Courts Act, Act 10 of 2013, to wit that there was a gross irregularity committed during the proceedings.
 4. The Applicant was legally represented by Mr. Maubane and Mr. Matheolwane appeared in respect of the Respondent.
 5. The Chief Magistrate issued directives on the 12/12/2022 to the effect that all legal representatives before appearing in Court must submit the following documents:
 - Certificate of Admission as attorney or Advocate
 - Right of Appearance
 - Fidelity Fund Certificate; to the Office of the Senior Magistrate.
 6. Mr. Matheolwane and Mr. Maubane submitted that their documents to Mrs. Jansen van Vuuren, who was an Additional Magistrates in the Criminal Court. It was handed to me and placed on a file where all the above mentioned documents are filed chronologically.
 7. The documents are attached.
 8. Another legal practitioner approached me and enquired whether we follow up with the Legal Practice Council if a legal practitioner is indeed admitted and in good standing with the LPC.
 9. He reported that Mr Matheolwane is not in good standing with the LPC following a expired right of appearance as an Attorney.
 10. Correspondence from the Legal Practise Council are also attached confirming same.
 11. Therefore, Mr Matheolwane had no right to appear on behalf of the respondent during the Formal Maintenance Enquiry; which was conducted in terms of section 10 of the Maintenance Act 99 of 1998 which was conducted on the 12th June 2024.
 12. The transcribed record of Proceedings is attached.
 13. It is my submission that the proceedings be set aside and matters be heard before another Magistrate.
 14. I submit further that the interim Maintenance order dated 08th April be set aside.”
- (sic)
- [4] The proceedings in the implicated matter are not reviewable in terms of the Magistrates Court Act 32, 1944 but in terms of section 22 of the Superior Courts Act 10, 2013 (‘the Superior Courts Act’), which provides a statutory basis for the review of proceedings of the Magistrates Court on certain specific grounds, it is, namely:

“22 Grounds for review of proceedings of Magistrates’ Court

- (1) The grounds upon which the proceedings of any Magistrates’ 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. ”

(emphasis added)

- [5] The Senior Magistrate sent the matter on review to this Court on the basis that it falls within the ambit of a “gross irregularity in the proceedings” as envisaged in section 22(1) (c) of the Superior Courts Act.
- [7] In terms of section 24(1) of the Legal Practice Act 28 of 2014, “(a) person may only practise as a legal practitioner if he or she is admitted and enrolled to practise as such in terms of this Act.”
- [8] At section 33(1) of the same Act there is the prohibition that, “(s)ubject to any other law no person other than a legal practitioner who has been admitted and enrolled as such in terms of this Act may, in the expectation of any fee, commission, gain or reward: (a) appear in any court of law or before any board, tribunal or similar institution in which only legal practitioners are entitled to appear...”
- [9] The Legal Practice Council (‘LPC’) confirmed, under the hand of Mr Mpilo Xulu, a legal officer in the LPC’s professional affairs department, that Matheolwane’s right of appearance expired 16 February 2024 and that no further right of appearance was issued to him thereafter.
- [10] The formal maintenance enquiry in which Matheolwane appeared was convened in terms of section 10 of the Maintenance Act, 99 of 1998. Subsection 10(3) provides that “(a)ny party to proceedings under this Act shall have the right to be represented by a legal representative.”
- [11] As it is now evident, Matheolwane appeared in contravention of sections 24(1) and 33(1) of the Legal Practice Act. Stated differently, he had by law no right of appearance to represent the respondent as he did. In doing so, it is axiomatic that he unfairly

infringed the respondent’s right to a fair hearing.

[12] The Constitution of the Republic of South Africa, 1996 entrenches everyone's right to a fair public hearing[2]. The Constitutional Court recognised that the:

"Section 34 fair hearing right affirms the rule of law, which is a founding value of our Constitution. The right to a fair hearing before a court lies at the heart of the rule of law. A fair hearing before a court is a prerequisite to an order being made against anyone is fundamental to a just and credible legal order. Courts in our country are obliged to ensure that proceedings before them are always fair. "[3]

[13] For all these reasons, the proceedings in the formal maintenance enquiry stand to be reviewed and set aside in toto.

[14] In the premises it is ordered that:

- (i) The formal maintenance enquiry proceedings under file number 000470/2023/906 are hereby reviewed and set aside including the interim maintenance order dated 8 April 2024.
- (ii) The Clerk of the Court, Thabane is directed to subpoena the parties, to the maintenance proceedings, to Court so that the Presiding Magistrate may inform them of the outcome of the review.
- (iii) The said maintenance proceedings be heard before another Magistrate.
- (iv) A copy of this judgment is to be brought to the attention of the Chief Magistrate, North West Province.
- (v) Further, a copy of the judgment is to be brought to the attention of the Legal Practice Council (Professional Affairs).

Titus, AJ

Acting Judge of the High Court

North West Provincial Division

I agree,

DJAJE, DJP

Deputy Judge President

[1] Bester v Easygas (Pty) Ltd 1993(1)SA30 (C) at 42G-43C citing Ellis v Morgan, Ellis v Desai 1909 TS 576 at 591

[2] Section 34(1)

[3] De Beer NO v North-Central Local Council and South-Central Local Council [2001] ZACC 9, 2002(1)SA 429 (CC) para 11

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Prepared on 10 October 2026 · Esheria