

SOUTH AFRICA / JUDGMENT

Izwelethu Cemforce CC v Dr Ruth Segomotsi Mompoti District Municipality (M509/2022) [2023] ZANWHC 192 (4 September 2023) [2023] ZANWHC 192

COURT

North West High Court, Mafikeng

BEFORE

Morgan AJ

CASE / FILE NUMBER

M509/2022

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IN THE HIGH COURT OF SOUTH AFRICA

NORTH WEST DIVISION, MAHIKENG

CASE NO: M509/2022

[1] Reportable: YES

/ NO

[2] Circulate to Judges: YES

/ NO

[3] Circulate to Magistrates:

YES / NO

[4] Circulate to Regional Magistrates: YES / NO

DATE: 04.09.2023

SIGNATURE

In the matter between:

IZWELETHU CEMFORCE CC

APPLICANT

and

DR RUTH SEGOMOTSI MOMPATI

DISTRICT MUNICIPALITY

RESPONDENT

Heard and Ex Tempore Order Given on: 1 September 2023

Reasons

Requested: NO

Reasons Given on: 4 September 2023

These reasons were circulated electronically to the parties' representatives via email. The date and time of delivery of these

reasons are deemed to be 10:00 am on Monday, 4 September 2023.

JUDGE'S REASONS

- [5] At the date of penning these reasons, the parties had not written requesting reasons for my order. However, I deem it prudent that I provide them with reasons.
- [6] This matter came before me on the opposed motion roll and pertains to the hearing of an interlocutory application brought by the Ruth Segomotsi Mompati District Municipality (the respondent in the main proceedings) to stay the adjudication and finalisation of the main application brought by Izwelethu Cemforce CC (the applicant in the main proceedings) for a monetary judgment based on a contractual claim worth 35 million in respect of services rendered for a tender awarded. The outcome of the interlocutory application is interrelated with how the adjudication of the main application is to proceed.
- [7] I heard this matter virtually through Microsoft Teams.
- [8] Prior to hearing both parties' arguments on the interlocutory application, I raised a preliminary issue of concern: that is, the Municipality's non-compliance with the Practice Directives of this Division^[1] (Directives) and Uniform Rules of Court (Rules) in having this matter properly enrolled before me.
- [9] After hearing arguments on the preliminary issue, I made an order in the following terms:
1. The interlocutory application is struck off from the roll.
 2. The re-enrolment of the interlocutory will only be allowed once a supplementary affidavit is filed satisfactory explaining why it should be re-enrolled.
 3. The main application is postponed pending the proper compliance with this Division's Practice Directives regarding the enrolment of opposed applications.
 4. The Municipality shall bear the wasted costs occasioned by the strike-off of the interlocutory application and postponement of the main application on an attorney and client scale.

- [10] I requested counsel to make submissions on the non-compliance with the Directives and Rules regarding having the interlocutory application before me properly enrolled for adjudication.
- [11] Of particular significance regarding the Municipality's non-compliance was the following: first, the papers in the interlocutory application contained in the court file were not indexed, paginated, and bound as they should; second, there was no notice of set down delivered (notwithstanding in the previous hearing leading to the postponement this was done); and third, the Municipality delivered no heads of argument and practice note as the applicant in the interlocutory application.
- [12] The Municipality failed to comply with Rule 62 of the Uniform Rules of Court and the Practice Directive in that the papers in the court file were not correctly collated, secured and paginated as required.[2] Rule 3(a) of the Practice Directive stipulates that "this requirement that is strictly enforced".
- [13] During arguments, Mr Rip SC, for the Municipality, conceded that there was no compliance as described above and submitted that he could not explain why the Municipality was noncompliant and submitted that he could not take the submission any further.
- [14] There appears to be a growing prevalence of total disregard for the Rules and failure to comply with the Directives of this Division. Rules and Directives are made for the efficient, expeditious and uniform administration of justice in the High Courts. Coetzee J in Reitmann said:
- 'Rules are made to be followed, and Rules are there so that rights and duties flow; in the event of non-compliance, legal results flow.'[3]
- [15] In National Director of Public Prosecutions, the Supreme Court of Appeal noted that Directives 'deal essentially with the daily functioning of the courts and, their purpose is to supplement the rules of court.'[4]
- [16] Recently, the Supreme Court of Appeal in National Director of Public Prosecutions (Ex Parte Application) reiterated that 'Practice Directives provide essential guidance for the daily functioning of the courts' and that 'the competence of the courts to give Practice Directives is an important means by which the work of the courts may be carried out.'[5]
- [17] It is time-consuming and tedious when a judge has to trawl through the papers in preparation for a hearing, looking for an annexure not clearly identified in the index, or if identified, papers are not paginated. The time has now come to send a stern warning to the practitioners appearing in this Division that unless there are justifiable circumstances warranting condonation for the omission or default, Courts will not tolerate non-compliance with the Rules of Court and Practice Directives.

[18] Rules are made to regulate and facilitate speedy preparation by the judges and parties themselves, thereby enhancing the speedy resolution of disputes and minimising costs attendant to perusal.

[19] The importance of compliance with these Directives and Rules cannot be overstated. Failure to adhere to these guidelines not only

hampers the smooth functioning of the Court but also undermines the integrity of the judicial process. It can result in unnecessary

delays, confusion, and prejudice to the parties involved in a case.

[20] Legal practitioners have a solemn duty to uphold the law and ensure that justice is served. This duty includes a responsibility to diligently study, understand, and apply the Directives and the Rules in all their dealings before this Court. Ignorance of these Directives and Rules is not an excuse, as it is incumbent upon practitioners to continually educate themselves about the requirements of practising law in this jurisdiction.

[21] Practitioners have an obligation both to the court and to their client and so far as the observance of the Rules is concerned. The Rules have been supplemented with Directives in the form of Practice Directives or manuals issued by the various Judges President. They are designed to uphold the dignity of the Court and to promote a uniform and expeditious adjudication of disputes. Persons who appear in the High Court should therefore be acquainted with the Practice Directives and abide by them. Practitioners should not be permitted to disregard the Rules nor the Directives.

[22] Moreover, it is crucial to emphasise that compliance with these Directives and rules is not a matter of personal preference. It is a matter of professional ethics and responsibility. Legal practitioners have a duty to their clients, the Court, and the public

to adhere to these guidelines and rules, as their non-compliance can result in grave consequences, including sanctions and disciplinary

actions.

[23] No index has been prepared in the present matter, and the Municipality has delivered no notice of set down. The papers, in short, are not in order. When arguing on what the reason is, counsels for the applicant cannot give any reasonable or plausible explanation

safe to say they had administration challenges such as explanation, in my view, cannot be countenanced precious court time and limited resources are being wasted to the prejudice as the detriment of the court and other litigants waiting in the queue to have the matters adjudicated.

[24] Conduct of this nature can only stop if the Rules are strictly enforced. The unfortunate part is that litigation is expensive. Unfortunately, legal representatives do not lose out in that they still charge fees for attending court even if the matter does not proceed. The only way to force them to comply is to deprive them of the fees for preparation and appearance once the matter is struck off the roll. Failure to comply with the Directives of this Division and the Rules is deliberate because any practitioner can see the defects

when preparing heads of argument.

[25] In the circumstances, this matter has to be struck off the roll, and reinstatement thereof will only be allowed once a satisfactory affidavit is filed explaining why the matter should be re-enrolled notwithstanding the Municipality's failure to comply with the Directives of this Division when setting down the matter for hearing on 1 September 2023. I must send a warning that in future, this Court will not hesitate to make an order that legal practitioners concerned be deprived of their fees for preparation and appearances in Court if the matter is struck off the roll for failure to comply with the Rules, Directives, or order made by the Court.

[26] Let this judgment remind all legal practitioners of their solemn duty to uphold the law and adhere to the Practice Directives and Uniform Rules of the Court. We must all strive for the highest standards of professionalism and integrity in our legal practice to ensure that justice is not only done but is seen to be done.

[27] Accordingly, my order ad paragraph 5 above is confirmed.

MORGAN AJ

PARTIES REPRESENTATIVES

FOR THE APPLICANT: Adv. Grobler SC, instructed by Honey Attorneys, C/O Nienaber & Wissing

FOR THE RESPONDENT: Adv. Rip SC, instructed by Seabela Attorneys, C/O Kgomo Attorneys Inc.

[1] Directive 8(a).

[2] Practice Directive Rule 3(a); Uniform Rule 62(4).

[3] Reitmann v Jansen van Rensburg 1984

(2) SA 174 (W) at 179H.

[4] National Director of Public Prosecutions

[2018] ZASCA 86; 2018 (2) SACR 176 (SCA) at para 31.

[5] National Director of Public Prosecutions (Ex Parte Application)

[2021] ZASCA 142; 2022 (1) SACR 1 (SCA) at para 19.

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Prepared on 12 October 2026 · Esheria