

SOUTH AFRICA / JUDGMENT

Jacobs v Van Der Merwe (R55/2020) [2020] ZAFSHC 153 (3 September 2020) [2020] ZAFSHC 153

COURT

Free State High Court, Bloemfontein

BEFORE

AF Jordaan, CJ Musi

CASE / FILE NUMBER

R55/2020

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IN

THE HIGH COURT OF SOUTH AFRICA,

FREE

STATE DIVISION, BLOEMFONTEIN

Case

number: R55/2020

In

the matter between:

L.

JACOBS

Applicant a quo

and

H.

VAN DER

MERWE

Respondent a quo

REVIEW

JUDGMENT

CORAM: MUSI JP et JORDAAN, J

HEARD ON: IN CHAMBERS

JUDGMENT

BY: JORDAAN J

DELIVERED ON: 03 SEPTEMBER 2020

- [1] This matter originates from proceedings in the magistrates Court, Bloemfontein in respect of an application in terms of section 4 of the Domestic Violence Act, 116 of 1998.
- [2] The acting senior magistrate, being of the view that the proceedings were tainted by gross irregularities committed by the presiding magistrate, submitted the matter to the High Court for "Review in terms of section 22 of the Superior Courts Act"
- [3] I queried the legal basis for the senior magistrate's entitlement to simply submit proceedings in a civil matter for review by the High Court, similar to a special review in terms of the Criminal Procedure Act.
- [4] The acting senior magistrate responded by inter-alia stating that she was unable to find any case law from the Free State High Court which precludes such procedure. While conceding that she has no locus standi, she submits that she acts in her capacity of overseeing proceedings in the magistrate's courts and in that capacity has a duty to bring substantial and gross irregularities by judicial officers to the attention of this court. She also relies on the inherent jurisdiction of this court to review proceedings emanating from the Magistrates Court.
- [5] A similar question arose in the matter of *Old Mutual Finance (Pty) Ltd. v Makalapetlo* 2018 (3) SA 258 (LP), a decision of the full bench of that division, where a magistrate simply referred the matter to the High Court for review. In that matter the learned full bench pointed out that, in civil proceedings there does not exist a similar procedure to the procedure set out in sections 302 and 304 of the Criminal Procedure Act. It correctly held that the procedure for review in civil proceedings are regulated by rules 6 and 53 of the Uniform Rules of Court.
- [6] In paragraphs 19 and 20 of the aforesaid judgement, the following is said:
- "[19] The procedure adopted by our Magistrates whereby they would mero motu submit judgements to the High Court for review without knowledge and/or participation of the erstwhile plaintiff and defendant is clearly not in accordance with the audi alteram partem rule. It must be borne in mind that the judgement creditor and judgement debtor are the interested parties in the purported review proceedings. I am unable to see how the magistrate can be an interested party in the proceedings and assume the role of the applicant.
- [20] The guidance this Court can give to the magistrate faced with irregular judgement like in the present case is that the irregularity should be pointed out to the interested or affected parties (plaintiff or defendant, judgement creditor or judgement debtor) and advise them that the matter is reviewable by the High Court under Rule 53. There is no room for the magistrate to simply submit the case to the High Court for review."
- [7] In conclusion the full bench found that the matter is not subject to review by the High Court in terms of the procedure followed in that matter. The matter was simply struck from the roll.

- [8] I am in full agreement with the findings and conclusions in the aforesaid judgement. The present matter is not distinguishable in any respect.
- [9] The learned senior magistrate submitted that the preamble of the Domestic Violence Act makes it clear that proceedings in terms of the act are not civil proceedings, except for the fact that section 16 provides for the applicability of the Magistrates Courts Act and the Superior Courts Act in respect of appeals and reviews. I fail to find anything in the preamble to the act which suggests that the proceedings in terms of the act are not civil proceedings. The contention of the senior magistrate that proceedings in terms of the Domestic Violence Act are sui generis and therefore should be dealt with differently is unconvincing. The act simply provides for a speedy and cost-effective way to obtain interdictory relief. Such relief remains relief of a civil nature subject to the rules of civil procedure. That is explicitly acknowledged in section 16 of the act.
- [10] In conclusion the matter is struck from the role.

AF JORDAAN, J

I concur

CJ MUSI, JP

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Prepared on 12 October 2026 · Esheria