

SOUTH AFRICA / JUDGMENT

Makhubele and Another v University of the Witwatersrand and Another (2024/028930) [2025] ZAGPJHC 590 (15 May 2025)

[2025] ZAGPJHC 590

COURT

South Gauteng High Court, Johannesburg

BEFORE

Mfenyana

CASE / FILE NUMBER

2024/028930

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IN THE HIGH COURT OF SOUTH AFRICA

GAUTENG DIVISION, JOHANNESBURG

CASE NO: 2024-028930

REPORTABLE: NO

(2) OF INTEREST TO OTHER JUDGES: NO

(3) REVISED: NO

19/05/2025

In the matter between:-

NATHANIEL TSAKANI MAKHUBELE

1st Applicant

TSAKANI MAKHUBELE

2nd Applicant

and

UNIVERSITY OF THE WITWATERSRAND 1st Respondent

STUDENT REPRESENTATIVE COUNCIL

UNIVERSITY OF THE WITWATERSRAND 2nd Respondent

REASONS

Mfenyana J

- [1] The applicants instituted multiple applications under the banner of an application for reconsideration. The purported reconsideration application is a sequel to a judgment and order of Du Plessis J handed down on 5 March 2025. Before Du Plessis J, the applicants sought an order reviewing and setting aside an agreement concluded between the first and second respondents, in terms of which certain students who are indebted to the University were permitted to register for the 2025 academic year, but did not extend to graduates who are seeking to obtain their degree certificates despite their indebtedness. In that order, Du Plessis J struck the application from the roll for lack of urgency, and ordered the applicants to pay the costs on Scale C.
- [2] When the matter served before me in the urgent court, the second applicant, who is the first respondent's daughter, and at the centre of the application was not in attendance, and as such played no part in the proceedings. The first applicant, not having authority to represent the second respondent, could only proceed with the application in so far as it relates to himself.
- [3] I made an order dismissing the application, ordering the first applicant to pay costs on a punitive scale as between attorney and client. I further ordered that the first applicant was prohibited from bringing any application on any issue associated with this case number as well as case number: 2022- 07895 until security for costs had been provided, in compliance with the judgment of Fisher J of 15 November 2023. I further directed that a copy of my order, as well the orders and judgments by Fisher J, Budlender AJ, van Aswegen AJ, van de Walt AJ, and Meyer AJ be provided to the Registrar of this Court to avoid similar applications being instituted by the applicants.
- [4] Before delving into further detail, it is pertinent to, at the outset state that the first applicant transmitted email correspondence for the attention of my registrar, in which he indicated that he was requesting reasons for the order I issued. The said email was not accompanied by any notice or a notice compliant with the provisions of rule 49(1)(b). That notwithstanding, the first applicant appears to believe the email to my registrar to be such a request, which it is not. It bears mentioning that in the course of preparing these reasons, I observed that a notice in terms of rule 49(1)(b) was uploaded on Caselines by the first applicant without having been brought to the attention of the Registrar of this Court for my attention. To the extent that it may be considered that the first applicant has complied with the provisions of the applicable rule, these reasons are provided against that background.
- [5] In the application before me the applicants sought relief on an urgent basis that:
“ 1) ...
2) The judgment delivered by the Honourable Judge Du Plessis on 06

March 2025 be reconsidered, rescinded or recalled.

- 3) The administrative action of the 1st and 2nd Respondents reflected in their agreement published in the media statement published on the 1st Respondent's website on 21 February 2025 (administrative action), be declared invalid, unlawful and unconstitutional to the extent that it violated the rights of the of the 2nd Applicant and her peers to equality and just administrative action.
- 4) The administrative action alluded at paragraph 3 above be reviewed, set aside and corrected.
- 5) The administrative action alluded at paragraph 2 above be corrected to include students or graduates of the 1st Respondent indebted to the 1st Respondent in the amount less than R150 000.
- 6) If granted, the operation of the order to be granted in terms hereof shall not be suspended by any leave to appeal or appeals.
- 7) A no costs order issues."
- [6] Although the application is titled "Reconsideration Application", it is a hybrid of no less than four applications,

none of which is competent or compliant with the Rules of this Court. As is apparent from the above extract from the notice of motion, the applicants sought a reconsideration, rescission, a review, and an application in terms of section 18 of the Superior Courts Act.

- [7] The reconsideration application itself fell short of the requirements of rule 6(12)(c) which permits a party against and in the absence of whom an order was granted in an urgent application, to set the matter down for reconsideration. The order for which reconsideration was sought by the applicants was instituted by the applicants themselves, and made in the presence of the applicants, particularly the first applicant. As already stated, in that application, Du Plessis J struck the application from the roll.
- [8] It is common cause that the application sought to be reconsidered was opposed by the respondents. It is therefore not a course open to the applicants to seek a reconsideration of an application brought by them under rule 6(12)(c). Moreover, the merits of the application are yet to be heard, and as the order of Du Plessis J intimates, in due course. The application is no more than a re-enrolment of the same application, in the urgent court, in circumstances where the application was struck off the roll for lack of urgency. As such, rule 6(12)(c) does not find application.
- [9] Another curious feature of the self-styled 'reconsideration application' is that it incorporates in it a rescission

application. No grounds are set out for the rescission of the judgment of Du Plessis J, which as I have already stated, struck the application off the roll with costs. The application for rescission is clearly a non-starter.

- [10] Similarly, the application for the review of the decision of the first and second respondents is doomed to fail. Not only was the purported application before Du Plessis J, it also does not even pass the starting blocks for a review application. Naturally, the application in terms of section 18 of the Superior Courts Act that the order reviewing and setting aside the decision of the respondents, if granted, should not be suspended by any appeal, being dependent on the success of the review application by any appeal, should also fail.
- [11] In its answering affidavit, the first respondent contends that the application already served before Du Plessis J, and as such the application constitutes an appeal against the order of Du Plessis J, and importantly that the application is fatally defective.
- [12] The fact of the matter is that Du Plessis J, not satisfied that the applicants had satisfied the requirements for urgency, struck the matter from the roll. The learned judge did not deal with the merits of the application. That being so, the applicants are not entitled to re-enrol the matter in the urgent court. The entire application is therefore nothing short of gross abuse of the process of court.
- [13] As in previous applications reflected in the judgments of Du Plessis and Fisher JJ, the second applicant did not independently advance her case which for all intents and purposes, is steered by the first applicant. The application itself consists of 254 volumes, running into thousands of pages, and no less than seven judgments, for materially the same issues, and a relentless effort by the applicants to encumber the record of this court, and disregard any and all judgments issued against them.
- [14] Moreover, Meyer AJ and Budlender AJ, in dismissing the application, as far back as June and July 2023, found the application to be without merit and not urgent. It defies any logic why the applicants insist in enrolling the application in the urgent court. I reiterate that despite the various reincarnations of the application that was initially launched at the start of this litigation, the essence remains the same.
- [15] The incessant flouting of the Rules of this Court by the applicants is not without consequences; the fact that the applicants, particularly the first applicant, are unrepresented litigants notwithstanding. While the first applicant may not necessarily be au fait with the Rules and procedure, and only has a superficial understanding thereof, he rejected a suggestion by this Court to obtain legal representation. The upshot of it is that having chosen how to conduct his litigation, the first applicant should face the consequences of his election.
- [16] It thus appears reasonable that the respondents should not be put out of pocket by defending these ceaseless applications from the applicants, seemingly without an appreciation of the consequences thereof. These costs should be borne by the first applicant. As to the scale of costs, it is evident that not only is the application not urgent, but there is also no basis for it, or any of the applications encapsulated under the guise of a reconsideration application. If regard is had to the course of litigation embarked on by the

applicants, all of which relate to virtually the same underlying cause, it is not difficult to see that the present application is an abuse of the process of Court. The fact that the applicants were ordered to tender security for costs was in appreciation of this fact, and only serves to exacerbate the applicant's situation.

- [17] It makes no difference that the first applicant avers that Fisher J's order directing them to provide security for costs is the subject of an appeal. The fact of the matter is that the applicants cannot have both their cake and their ice cream. If the applicants opt to pursue the appeal, they should bear the consequences of that choice. If not, and if they choose, as it appears to be the case, to proceed with the litigation, Fisher J's order must be complied with before further costs are expended. Having said that, I decline to venture into the appealability or not of that order.
- [18] There is simply no justification for the ongoing use of judicial resources to entertain vexatious and meritless applications from the applicants. What is worse is that all these applications are brought in the urgent court, without setting out comprehensively, the reasons why such applications cannot be entertained in due course and with no compliance whatsoever with the requisites of urgent applications. With this in mind, and the preceding numerous and unsuccessful applications, I considered it prudent to deal with the application pragmatically and in a manner that would optimistically bring finality to the senseless litigation instigated by the applicants.
- [19] Consequently, I dismissed the application with costs against the first applicant on a scale as between attorney and client.

S MFENYANA

JUDGE OF THE HIGH COURT OF SOUTH AFRICA

GAUTENG DIVISION, JOHANNESBURG

APPEARANCES

For the first applicant: NT Makhubele in person

For the second applicant.: No appearance

For the 1st respondents: S Khumalo SC

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