

SOUTH AFRICA / JUDGMENT

Maseko v Ricci (A039604/2023) [2024]

ZAGPJHC 151 (19 February 2024)

[2024] ZAGPJHC 151

COURT

South Gauteng High Court, Johannesburg

BEFORE

B. C. Wanless, A. Crutchfield

CASE / FILE NUMBER

A039604/2023

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REPUBLIC OF SOUTH AFRICA

IN THE HIGH COURT OF SOUTH AFRICA

GAUTENG LOCAL DIVISION, JOHANNESBURG

Case No: A039604/2023

1. REPORTABLE: NO
2. OF INTEREST TO OTHER JUDGES: NO
3. REVISED YES

19 February 2024

In the matter between

ANDILE ARON MASEKO Appellant

And

MARIO GERALD RICCI

Respondent

J U D G M E N T

WANLESS, J (CRUTCHFIELD J concurring)

- [1] This is an appeal by one Andile Aron Maseko, adult male ("the Appellant") against the order ("the order") granted in the Westonaria Magistrates' Court on the 8th of March 2023. In terms of the order the court a quo dismissed the Appellant's application instituted against one Mario Gerald Ricci, adult male ("the Respondent") with costs.

- [2] On the 8th of March 2023 the learned Magistrate, before making the order, delivered an ex tempore judgment which was mechanically recorded. Thereafter, on the 23rd of March 2023 the Appellant, in terms of subrule 51(1) of the Magistrates' Court Act Rules ("the Rules") requested reasons from the Magistrate for his judgment. Despite the fact that it appears that this request was out of time (subrule 51(1) requires that the said request be made within 10 days after judgment and before noting an appeal) the Magistrate nevertheless responded to that request, in writing, on the 30th of March 2023. In that response the learned Magistrate noted that, inter alia, he was satisfied that he had delivered a comprehensive judgment which complied fully with the provisions of subrules 51(1)(a) and (b) of the Rules. In other words, he did not wish to add thereto. It is useful to note, at this stage, that a transcript of that judgment does not form part of the record of appeal ("the record") before this Court.
- [3] Thereafter, on or about the 14th of April 2023 the Appellant noted this appeal in terms of subrule 51(3) of the Rules by way of his "APPLICATION FOR

CONDONATION; NOTICE FOR LEAVE TO APPEAL" ("the Notice of Appeal") dated the same date. It is apparent therefrom that the Appellant seeks condonation for the late filing of the application for leave to appeal. In terms of subrule 51(3) an appeal may be noted within 20 days after the date of judgment appealed against. The Appellant was of the view that the Notice of Appeal was out of time. This Court is not necessarily of the same opinion. Moreover (as confirmed during the course of the hearing of this appeal) the Respondent had no objection thereto and had suffered no prejudice thereby. In the premises, insofar as it is necessary, in the event of the Notice of Appeal being outside of the time limit as provided for in subrule 51(3) of the Rules, same is condoned by this Court.

- [4] Rule 50 of the Uniform Rules of Court, is the applicable rule dealing with civil appeals from the Magistrates' Courts. Subrule 50(1) reads as follows:

"An appeal to the court against the decision of a magistrate in a civil matter shall be prosecuted within 60 days after the noting of such appeal, and unless so prosecuted it shall be deemed to have lapsed." [1]

As is clear from the foregoing the provisions of subrule 50(1) are peremptory.

- [5] In the premises, the Appellant had 60 days from the 14th of April 2023 to prosecute this appeal. This meant that he had until the 14th of June 2023 to do so. If he failed to do so the appeal would lapse in terms of subrule 50(1) of the Uniform Rules of Court. The Appellant only prosecuted this appeal on or about the 7th of August 2023 when he applied to the Registrar of this Court for a date for the hearing thereof in terms of subrule 50(4)(a) read with subrule 50(4)(c) of the Uniform Rules of Court.
- [6] When this Court engaged with the Appellant (who appeared in person) in respect of this difficulty faced by the Appellant, it immediately became apparent to this Court that the Appellant either did not understand (or did not want to understand) the difference between the provisions of subrule 51(3) of the Rules dealing with the noting of an appeal in the

Magistrates' Court and subrule 50(1) of the Uniform Rules of Court dealing with the prosecution of the same appeal in this Court (the High Court). This was so, despite the best efforts of this Court to explain the difference to him. It is also worth noting that at this stage, an Advocate who was present in court, who is a member of the Johannesburg Society of Advocates, offered (in the best tradition of the Bar), to assist the unrepresented Appellant by explaining same to him. This offer was rejected by the Appellant who assured this Court that not only had he appeared in this Court on approximately five or six occasions but he had also appeared in the Supreme Court of Appeal and the Constitutional Court.

- [7] In this vein the Appellant continually referred to the application for condonation he made at the stage when he noted the appeal despite the fact that it was pointed out to him by this Court that in terms of subrule 50(1) of the Uniform Rules of Court the appeal had lapsed and that he had failed to bring an application before this Court for condonation in respect thereof. At the same time the Appellant readily conceded the necessity for litigants to adhere to the rules of this Court.
- [8] It is trite that this Court has the inherent jurisdiction to regulate its own procedures. Applications for condonation are brought on a fairly regular basis before this Court by would-be appellants who, for various reasons, have fallen foul of the provisions of subrule 50(1) of the Uniform Rules of Court. No such application for condonation has been instituted by the Appellant in this appeal. As set out above the provisions of the relevant subrule are peremptory and for good reason. It is imperative that the rolls of this Court are run efficiently, thereby ensuring the maximum use of this Court's time and resources. In addition, it is imperative that the rights of a Respondent in the appeal process are not prejudiced in any manner and that there is some deference to the doctrine of finality. In the premises, this Court holds that the appeal in this matter has lapsed.
- [9] In addition to the foregoing, there are various other difficulties giving rise to the fact that it is not possible for this Court to entertain this appeal. It is not the intention of this Court to burden this judgment unnecessarily by dealing with each of these inadequacies in great detail. Rather, they are simply set out below for record purposes.
- [10] Together with the failure of the Appellant to prosecute the appeal in time, this matter is defective in that:

10.1 the judgment of the court a quo does not form part of the record;

10.2 the Appellant's Heads of Argument were not filed timeously in terms of the Practice Directive of this Court; and

10.3 the Appellant has failed to lodge proof of security for costs of the appeal (this fact was conceded by the Appellant).

- [11] In the premises, it must follow that this appeal should be struck from the roll. It is also clear that the Appellant should be ordered to pay the costs. The Respondent was entitled to be represented at the hearing of the appeal to, at the very least, protect his interests and make submissions to this Court as to why this appeal should not be heard.
- [12] As to the scale of those costs, Advocate Liebenberg, on behalf of the Respondent, has submitted to this Court that those costs should, having regard to the facts of this matter and the fact that the Respondent has been mulcted in unnecessary costs, be on a punitive scale, namely on the scale of attorney and client. Having regard to all of the relevant facts as set out herein, it is the opinion of this Court that this submission is a good one and this Court, in the exercise of its general discretion pertaining to costs, makes such an order.
- [13] This Court makes the following order:
1. The appeal under case number A2023/039604 is struck off the roll.
 2. The Appellant (Andile Aron Maseko) is ordered to pay the costs occasioned by the striking of this appeal from the roll on the scale of attorney and client.

B. C. WANLESS

JUDGE OF THE HIGH COURT

GAUTENG LOCAL DIVISION

JOHANNESBURG

I agree,

A. CRUTCHFIELD

Date of Hearing:

06 February 2024

Date of Judgment:

APPEARANCES

On behalf of the Appellant:

In Person

On behalf of the Respondent:

Adv. E. Liebenberg

Instructed by:

Rosa Van Niekerk Attorneys

[1] Emphasis added

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