

SOUTH AFRICA / JUDGMENT

Matebe v Makhambi (CA&R 7/2020)

[2023] ZANCHC 74 (3 November 2023)

[2023] ZANCHC 74**COURT**

Northern Cape High Court, Kimberley

BEFORE

Williams, Stanton

CASE / FILE NUMBER

CA&R 7/2020

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IN THE HIGH COURT OF
SOUTH AFRICA
(NORTHERN
CAPE DIVISION, KIMBERLEY)
CASE
NO.: CA&R 7/2020

Date delivered:	03-11-2023
Reportable:	Yes/No Circulate
to Judges:	Yes/No Circulate
to Magistrates:	Yes/No In
the matter between:	Brenda Matebe Appellant and Vuyisile Makhambi Respondent

CORAM:

WILLIAMS J et STANTON J:

JUDGMENT**WILLIAMS J:**

1. This review matter was first received by the Registrar's Office on 11 February 2020 with a request from the magistrate, Pofadder, that the above part-heard maintenance court proceedings be set aside and for an order that the matter be heard de novo. The reasons for the request are as follows:
 - 1.1. On 23 November 2018 the matter was postponed for further hearing to 18 January 2019. On that day attorney D Britz came on record for the applicant and requested a transcript of the past proceedings. The magistrate postponed the matter for a month and ordered that the transcript of the proceedings be made available to both parties.
 - 1.2 On 18 February 2019, the magistrate was informed that a transcript of the proceedings was still not available as the hard drive of the recording machine had been removed and sent to Pretoria. The matter was then further postponed to 29 March 2019.
 - 1.3 On 29 March 2019 the matter could still not proceed as the transcript was still not available and a cd of the proceedings could not be written. On that day the magistrate requested reasons as to why the hard drive had been removed without her knowledge and why she was not informed on 23 November 2018 that there were problems with the recording of the proceedings. At that stage the matter was postponed pending review by this court.
2. The difficulties pertaining to this matter were brought to the attention of the court manager, Springbok, on 4 April 2019.
3. The court manager, in a letter dated 23 January 2020 explained the reasons for the delay in submitting the review to this court as follows:
 - 3.1 The relevant court employees did not communicate all the challenges to him properly which caused huge delays;
 - 3.2 The maintenance officer who was to prepare the review and submit it to this court obtained employment at another place and the preparation of the review had to be assigned to someone else; and
 - 3.3 Only after a long wait and due to complaints received was the matter finally attended to and submitted for review.
4. Once the review was submitted further delays ensued. Olivier J, who was initially seized with the matter, addressed certain queries to the magistrate on 17 February 2020 regarding inter alia attempts made to get the hard drive back from Pretoria and the possible reconstruction of the proceedings.

5. When the response to Olivier J's query was received back from the magistrate, the review was re-submitted to Chwaro AJ for consideration. Chwaro AJ was not satisfied that the magistrate had sufficiently addressed the queries by Olivier J and requested a full and comprehensive response on 20 November 2020.
6. On 19 October 2021, after no response was received from the magistrate the registrar brought this matter to my attention whereafter I enquired from the magistrate whether an attempt had been made to reconstruct the proceedings and if not, reasons for the failure to do so should be provided as a matter of urgency.
7. Another year has passed and after an e-mail sent on 29 August 2023 from the Office of the Registrar to provide urgent feedback on this matter, the only response appears to be an affidavit filed by the stenographer who was on duty on 23 November 2018, stating that no attempt at reconstruction has been made as the recording of the proceedings cannot be located on the recording devices.
8. The inordinate delays in this matter are regrettable. The manner in which the queries by the judges have been attended to leaves much to be desired. There is still no proper explanation regarding the retrieval of the record of the proceedings, whether by reconstruction or otherwise. It is in the interests of justice

however that the minor child no longer be subjected to further prejudice by delaying this matter any further.

The following order is made:

- a) The proceedings relating to the maintenance enquiry which commenced on 23 November 2018 are set aside.
- b) The matter is to be conducted de novo.

CC WILLIAMS

JUDGE

I concur

A STANTON

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Prepared on 11 October 2026 · Esheria