

SOUTH AFRICA / JUDGMENT

# Mathabatha v Kgomeswana and Others - Review (REV142/23) [2023]

## ZALMPPHC 96 (16 October 2023)

[2023] ZALMPPHC 96

## COURT

Limpopo High Court, Polokwane

## BEFORE

M. Naude-Odendaal, K. Pillay

## CASE / FILE NUMBER

REV142/23

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IN

THE HIGH COURT OF SOUTH AFRICA

LIMPOPO

DIVISION,

POLOKWANE

CASE

NO: REV142/23

REPORTABLE:

YES/NO

OF

INTEREST TO OTHER JUDGES: YES/NO

REVISED

16/10/2023

In

the matter between:

MATHABATHA

MALEGODI DAVID

APPLICANT

And

KGOMESWANA

MOGOMANE

1st

RESPONDENT

NKOSI

LAFATA

2nd RESPONDENT

THOBEJANE

MAKWADINGA

3rd  
RESPONDENT  
CHIDI  
SILAS  
4th  
RESPONDENT  
LEHLALEROA  
THOTOGELO  
5th  
RESPONDENT  
MATHABATHA  
WALTER  
6th  
RESPONDENT  
REVIEW

## JUDGMENT

NAUDE-ODENDAAL J:

- [1] This is special review application in terms whereof the Cluster Head of Thabamoopo is requesting the proceedings before Acting Magistrate

Matshethe on the 7th of July 2023 in the Magistrate's Court for the District of Lepelle-Nkumpi, Held at Lebowakgomo under Case number 166/2023, be reviewed and set aside.

- [2] It was submitted by the referring Cluster Head that the Acting Magistrate failed to keep record of the proceedings. The proceedings were done in chambers and no record was written down by long hand. Only the outcome of the proceedings were written down, which reads as follows:- "No domestic violence. Matter struck off".
- [3] The Acting Magistrate, in absence of any record, then indicated that he would provide written reasons for his order. However, when written reasons were provided, the order read as follows:-

"After analyzing the

## facts

the court decided that there is no Acts of harassment, and the matter be referred to [the] Senior Royal House of Mathabatha or Mphahlele to be resolved. As a result the application is dismissed."

- [4] It is on these grounds that the Acting Head requests the matter to be set aside and the matter to be heard de novo.
- [5] Section 36(1) of the Magistrate's Court Act 32 of 1944, as amended, stipulates as follows:-

"The court may, upon application by any person affected thereby, or, in cases falling under paragraph (c), suo motu –

- (a) Rescind or vary any

### judgment

granted by it in the absence of the person against whom that

### judgment

was granted;

- (b) Rescind or vary any judgment granted by it which was void ab origine or was obtained by fraud or by mistake common to the parties;
- (c) Correct patent errors in any judgment in respect of which no appeal is pending;
- (d) Rescind or vary any

### judgment

in respect of which no appeal lies."

- [6] It was stated in the discussion of Subsection 1(c) of Section 36 of the Magistrate's Court Act that if on the record of proceedings it is clear that the order made by the court does not express its real intention, there is a patent error which may be corrected under this subsection. A patent error in a judgment may be corrected under subsection 1(c) if the mistakes arise from accidental slips or omissions, so as to do substantial justice and give effect to the meaning and intention of the court. But if the order correctly expresses the decision actually intended, then there can be no alteration under this subsection. The patent error must be corrected within a reasonable time so as to ensure that an obviously wrong judgment or order may be expeditiously corrected.
- [7] In the present matter the Magistrate altered his order from "struck from the roll" to "the application is dismissed." Although it is clear from the Magistrate's notes that he was of the view the acts did not constitute domestic violence which would have had the consequence of the matter being dismissed, the Magistrate none the less ordered that the application be struck from the roll.
- [8] In addition to dismissing the application in his written judgment, the Magistrate further referred the parties to the Senior Royal House applicable to be resolved.
- [9] There is a material difference in a domestic violence application and a protection from harassment application. These words cannot be used interchangeably in that it constitutes two different types of applications and the requirements to be proved in each of the applications, also differs materially.

[10] There is further a vast difference between striking a matter from the roll and dismissal. In the case of dismissal, the matter is disposed of and can no longer be set down on the roll again. If the Applicant wishes to proceed with the matter, he would have to start de nova. While on the other hand, striking of a matter off the roll has nothing to do with the merits of the case. It is not aimed at terminating the proceedings but merely suspends the hearing thereof pending an application for reinstatement. See *Skhosana and Others v Roos t/a Roos se Oord and Others* 2000

(4) SA 561 (LCC) at para 19.

[11] The Magistrate therefor did not merely correct a patent error but altered his judgment and the consequences thereof. The order pronounced is the order standing. By altering his judgment or order the Magistrate acted ultra vires his statutory powers as laid down in Section 36 of the Magistrate's Court Act and therefor acted irregularly. The proceedings and both orders issued by the Magistrate therefore stands to be reviewed and set aside.

[12] In the result this court makes the following order:-

1. The proceedings and both orders issued under Case Number 166/2023 in the Magistrate's Court for the District of Lepelle-Nkumpi, held at Lebowakgomo is reviewed and set aside.
2. The matter is referred back to the Magistrate's Court, Lebowakgomo, to be heard de nova before another Presiding Officer.

M. NAUDE-ODENDAAL

JUDGE OF THE HIGH COURT,

POLOKWANE

I AGREE:

K. PILLAY

ACTING JUDGE OF THE HIGH COURT,

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