

SOUTH AFRICA / JUDGMENT

Matsaung and Another v Matsaung and Others - Appeal (HCAA31/2022) [2023]

ZALMPPHC 108 (27 October 2023)

[2023] ZALMPPHC 108

COURT

Limpopo High Court, Polokwane

BEFORE

GC Muller, MS Sikhwari, LM Manzini

CASE / FILE NUMBER

HCAA31/2022

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REPUBLIC OF SOUTH

AFRICA

IN

THE HIGH COURT OF SOUTH AFRICA

(LIMPOPO

DIVISION, POLOKWANE)

CASE

NO: HCAA31/2022

REPORTABLE:

YES/NO

OF

INTEREST TO OTHER JUDGES: YES/NO

REVISED

27/10/23

In

the matter between:

THATO

KHOLOFELO MATSAUNG

FIRST

APPELLANT

MAMHULE

TRADITIONAL AUTHORITY

SECOND

APPELLANT

And

REBECCA

MAMODUPI MATSAUNG

FIRST

RESPONDENT

SEBETJA
ELIAS THOMAS
LETSOALO
SECOND
RESPONDENT
RAMAESELA
FLORA SETWABA
THIRD
RESPONDENT
FISRT
NATIONAL BANK
OF SOUTH AFRICA
FOURTH
RESPONDENT

JUDGMENT

MULLER ADJP:

"This matter also concerns the protection of the authority of the Judiciary to carry out its constitutional functions vested in it by section 165 of the Constitution, and the safeguarding of the rule of law, the supremacy of the Constitution, and the values that lie at the heart of our constitutional order."^[1]

^[1] An acrimonious traditional leadership dispute within the Bakone-Ba-Mamahule Ga Matsaung traditional community is at the centre of the appeal. The appeal is before the Full Court of this Division by virtue of leave having been granted by the Supreme Court of Appeal.^[2] Naude-Odendaal AJ (as she then was) in an application instituted by the appellants against certain members^[3] of the community and First National Bank,^[4] granted an order, the interpretation of which, was the focal point in an contempt of court application subsequently instituted against the bank. The Naude-Odendaal AJ order states:

"1. The fourth Respondent is ordered to unfreeze the following bank accounts of the Second Applicant held by the fourth Respondent

1.1 Money on Call Account No 627[...];

1.2 Platinum Business Account No 622[...];

1.3 Gold Business Account No 623[...];

1.4 Business Savings Pocket Account No 6279[...];

1.5 Platinum Business Account No 6279[...];

1.6 Money on Call Account No 625[...];

1.7 7 Day Notice Account No 745[...].

2. A registered accounting officer Mr LZ Makwela of LZ Makwela Institute of Administration and Commerce SA Office 13 JCJ Limprow Building, No 6 Hans van Rensburg Street, Polokwane, 0699 is appointed to assist the Mamahule Traditional Authority with the elevation and administration of its financial affairs pending the appointment by the Premier of a Chief, alternatively a Senior Traditional Leader, further alternatively a legitimate representative of the Mamahule Traditional Authority.
 3. Pending the appointment as aforesaid in prayer 2 of this order, Mr LZ Makwele, together with the current chairperson of the Mamahule Traditional Authority, will have the right to be added as co-signatories of and to the bank accounts of the Mamahule Traditional Authority and will have the rights to co-sign for any payments to be made from the bank accounts of the Mamahule Traditional Authority on recommendation and representation of such accounts and expenses by the Mamahule Traditional Authority to LZ Makwele Institute of Administration and Commerce SA after having considered the accounts and expenses as being reasonable and necessary.
 4. Each party to pay his/her/its own costs." [5]
- [2] The bank failed to comply with the order.[6] The appellants instituted urgent contempt of court proceedings against the bank and sought the following relief:
- "1. The Applicant's non-compliance with the Uniform Rules of Court is condoned and the matter is heard on an urgent basis in terms of Rule 6(12)(a).
2. For an order declaring that the Fourth Respondent is in contempt of the court order issued by Madam Justice Naude-Odendaal on the 24th May 2022, Case no 2506/22, and to comply with the court order within 24hrs within granting of this order.
 3. An order directing that the Fourth Respondent be directed to comply with the Court Order and unfreeze The Mamahule Bank Accounts to the Applicants.
 4. The Fourth Respondent is ordered to pay the costs of the application on an attorney own client scale.
 5. Further or alternative relief."
- [3] The bank opposed the application. Several defences were raised in limine in the answering affidavit deposed to by a legal adviser in the Commercial Litigation Department. In addition, the bank also delivered a notice in terms of rule 7 in which the authority of the first appellant to represent the second appellant and to bring the application on behalf of the second appellant as well the authority of the attorneys who represented the appellants were disputed.

- [4] The appellants responded to the challenge in terms of rule 7 and delivered resolutions taken by the Bakone Ba Mamahule Matsaung Royal Family dated 16 June 2021 in terms whereof the first appellant was appointed senior traditional leader and authorised to act on behalf of the second appellant.
- [5] At the hearing before Khanyago J the parties agreed to argue at the outset the defence of lack of locus standi of the appellants to bring the application. The learned Judge after conclusion of the arguments delivered a judgment in terms whereof the defence was upheld and the application dismissed with costs. Hence the appeal.
- [6] The learned Judge correctly, in my respectful view, observed that the order of Naude-Odendaal AJ is a valid order where he stated:

"Despite the order of Naude AJ remaining valid until set aside, this court will not disregard the consequences to follow should it grant its order based on an order which is not competent to be enforced. Should this court grant the applicants the orders that they are seeking, it will be validating what it has already found to be invalid, and cause confusion. It will not be in the best interest of justice to do that. I have already found that the applicants lack locus standi in this matter and also that the second applicant is not proper before this court. A court is empowered to refuse to grant an order because the applicants lacks locus standi."

- [7] Section 165(1) of the Constitution provides that the courts are vested with judicial authority and that no person may interfere with the functioning of the courts. Section 165(5) makes an order of court binding on all persons to whom it applies, and thereby ensuring the effectiveness of the authority of the courts.[7] It must follow, therefore, that the order granted by Naude-Odendaal AJ, at the instance of the appellants, is effective, valid and enforceable against the bank.

- [8] The Appellate Division in *S v Beyers*[8] acknowledged that:

"Oat daar 'n gevestigde prosedure bestaan waarvolgens 'n gedingvoerder wat 'n bevel teensy teenparty verkry het, in sy eie belang bestraffing van sy teenparty weens minagting van die Hof kan aanvra om gehoorsaamheid aan die bevel af te dwing, val nie te betwyfel nie."

- [9] The Constitutional Court confirmed in similar vein in *Secretary of the Judicial Commission of Inquiry into Allegations of State Capture, Corruption and Fraud in the Public Sector including Organs of State v Zuma and Others* supra that:

"Courts have the power to ensure that their decisions or orders are complied with by all and sundry, including organs of State. In doing so, courts are not only giving effect to the rights of the successful litigant but also and more importantly, by acting as guardians of the Constitution, asserting their authority in the public interest." [9]

[10] Cameron J in *MEG for Health Eastern Cape and Another v Kirkland Investments (Pty) Ltd t/a Eye & Lazer Institute*[10] held that administrative decisions despite invalidity cannot simply be ignored.[11] During the discussion of the principle reference was made to court orders that are nullities

"In *The Master of the High Court (North Gauteng High Court, Pretoria) v Motala and Others* 2012

(3) SA 326 (SCA) the Supreme court of Appeal. reaffirming a line of cases more than a century old, held that judicial decisions issued without jurisdiction or without the citation of a necessary party are nullities that a later court may refuse to enforce (without the need

for a formal setting aside by a court of equal standing). This seems paradoxical but is not. The court, as the fount of legality, has the means itself to assert the dividing line between what is lawful and not lawful. For the court itself to disclaim a preceding court order that is a nullity therefore does not risk disorder or self-help."[12]

[11] Kganyago J expressed the view that the order of Naude-Odendaal AJ, (which was not the subject of an appeal}, was valid until set aside but went on to hold that as a result of an appeal judgment delivered by the Full Court in another matter on the same date that the order in the contempt application before him, which included the same parties, cannot be enforced since the judgment in that matter could not simply have been overlooked by the applicants. The learned Judge also held that the appellants in whose favour the Naude-Odendaal AJ order was granted, have no locus standi (presumably as a result of the findings made in the Full Court decision).

[12] Having held that the Naude-Odendaal AJ order was valid, Kganyago J could hardly have held, at the same time, that the parties in whose favour the order was made, had no standing when those parties wished to enforce the order by means of a contempt of court application.

[13] The correctness of the statement of law that court orders remain valid until they are set aside cannot be doubted. It also follows, therefore, that the source of the right of the party in whose favour the order was granted to institute contempt of court proceedings, is the order of court itself.

[14] The applicants in whose favour the Naude-Odendaal AJ order was granted ex lege acquired locus standi to institute the contempt of court proceedings in terms of the order. It was therefore not open to the learned Judge to find that the applicants have no locus standi in the contempt application before him. Kganyago J, thus, erred in dismissing the application on the ground that the applicants lacked locus standi. The appeal on this ground falls to be upheld.

[15] The next issue to be determined is whether the application should be referred back to the court a quo for determination of the merits. Counsel for the respondent pointed out that only the locus standi defence was argued in terms of an agreement reached between the parties and not the merits.

[16] Courts should be slow to allow parties to engage in piecemeal litigation.[13] It is desirable, generally, in an application where affidavits are both pleadings and evidence, to dispose of the entire application in a single hearing.[14] The High Court has the inherent jurisdiction to protect and regulate its own processes and also has the power to develop the common law. [15] The parties agreed that only the issue of locus standi be argued and be disposed of at the hearing. The Court acceded to their request and allowed the determination of the preliminary issue first in the exercise of its jurisdiction in terms of section 173 of the Constitution. The defence of lack of locus standi that was raised in limine is essentially a special plea which was adjudicated separately from the merits by agreement. The relief claimed by the bank for the dismissal of the application has nothing to do with the relief

claimed in respect of the merits of the application. The dismissal of the entire application was the desired result to bring an end to the litigation. The judgment, furthermore, is devoted to the determination of that issue only with no reference to the merits. The words of Hefer JA in *Caroluskraal Farms (Edms) Bpk v Eerste Nasionale Bank van Suider-Afrika Bpk; Red Head Boer Goat (Edms) Bpk v Eerste Nasionale Bank van Suider-Afrika Bpk; Sleutelfontein (Edms) Bpk v Eerste Nasionale Bank van Suider-Afrika Bpk*[16] are apposite:

"Wanneer dit dan-hetsy in 'n aksie of mosieverrigtinge-gaan om 'n spesiale verweer wat afsonderlik verhoor is, kom dit my logies voor om te let op die effek van die uitspraak op die regshulp wat deur die verweerder of respondent aangevra is. In wese is die Verhoorhof in so 'n geval gemoeid met 'n versoek van die verweerder of respondent om die eis van die hand te wys op grond van 'n verweer wat niks te make het met die meriete van die saak nie. Dit is die regshulp wat op daardie stadium ter sprake is."[17]

[17] This is not a case where the merits were argued together with the point in limine. Had it been the case, this court would not have hesitated to determine the merits once and for all, on appeal. However, the Court a quo restricted itself to the determination of the point in limine without reference to the merits. This court is, moreover, deprived of its reasons on the merits. This court cannot sit as a court of first instance and also as a court of appeal. The application ought to be referred back, in my considered view.

[18] We were requested to award costs on a punitive scale. I do not agree. The court who will deal with the merits will be best suited to decide that issue.

ORDER

1. The appeal is upheld with costs, such costs to include the costs subsequent upon the employment of two counsel.
2. The order dismissing the application with costs is set aside.
3. The application is remitted back to the Court a quo for determination of the merits before another Judge.

GC MULLER

ACTING DEPUTY PRESIDENT OF THE
HIGH COURT LIMPOPO DIVISION: POLOKWANE

I concur

M.S SIKHWARI

ACTING JUDGE OF THE HIGH COURT
LIMPOPO DIVISION: POLOKWANE

L.M MANZINI

ACTING JUDGE OF THE HIGH COURT
LIMPOPO DIVISION: POLOKWANE

APPEARANCES 1. For the appellant : G Marcus SC : R Richards 2. For the respondent : GWAMM 3.
Date judgment reserved : 06 October 2023 4. Date judgment delivered : 27 October 2023

- [1] Per Khampepe ADCJ in Secretary of the Judicial Commission of Inquiry into Allegations of State Capture, Corruption and Fraud in the Public Sector including Organs of State v Zuma and Others 2021 (5) SA 327 par 25.
- [2] Order dated 2 November 2022.
- [3] Rebecca Mamodupi Matsaung (the first respondent); Sebetja Thomas Letsoalo (the second Respondent); Ramaesela Flora Setwaba (the third Respondent).
- [4] Fourth Respondent. (Hereinafter called "the bank").
- [5] No appeal lies against the order.
- [6] Dated 24 May 2022.
- [7] Pheko and Others v Ekurhuleni City 2015
(5) SA 600 (CC) par 26.
- [8] 1968
- (3) SA 70 (A), 808-C; Fakie NO v CCII Systems (Pty) Ltd [2006] ZASCA 52; 2006
- (4) SA 326 (SCA) par 8.
- [9] Par 26.
- [10] 2014
- (3) SA 468 (CC).
- [11] The same reasoning applies to court orders.

[12] Par 92 and 103, (fn 78).

[13] Democratic Alliance and Others v Acting National Director of Public Prosecutions 2012

(3) SA 486 (SCA) par 49.

[14] Theron and Another NNO v Loubser NO and Others 2014

(3) SA 323 (SCA) par 26.

[15] Section 173 of the Constitution. Manong & Associates (Pty) Ltd v Minister of Public Works and Another 2010

(2) SA 167 (SCA) par 11; South African Broadcasting Corp Ltd v National Director of Public Prosecutions and Others [2006] ZACC 15; 2007

(1) SA 523 (CC) par 35-36.

[16] 1994

(3) SA 407 (SCA)

[17] 416C-D.

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