

SOUTH AFRICA / JUDGMENT

Matsi Law Chambers v Mailula and Another (A165/2023) [2025] ZAGPPHC 564 (21 May 2025)

[2025] ZAGPPHC 564

COURT

North Gauteng High Court, Pretoria

BEFORE

NGM Mazibuko, SNI Mokose, JS Nyathi

CASE / FILE NUMBER

A165/2023

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IN THE HIGH COURT OF
SOUTH AFRICA
(GAUTENG DIVISION,
PRETORIA)

CASE

NUMBER: A165/2023

(1) REPORTABLE:

YES/NO

(2) OF INTEREST TO

OTHER JUDGES: YES/NO

(3) REVISED: NO

DATE: 21 MAY

2025

SIGNATURE:.

In

the matter between:

MATSI
LAW CHAMBERS
Appellant
and
LESIBA
JEREMIAH MAILULA
First
Respondent
LESIBA
MAILULA INC ATTORNEYS
Second
Respondent

Summary:

Section
165 (5) of the Constitution- An order of court is binding to
all
it applies – It remains in force and effect. The
successful party may execute it - However, Rule 45A permits
the
suspension of the order's operation and execution
provided in the case of an appeal, section 18 of the Superior
Courts Act is complied with - What is the legal effect of
application for leave to appeal on a court order-
Suspension of an order under appeal is automatic, except in
exceptional circumstances, as provided in section 18(3)
of
the Superior Courts Act- A party cannot be a contemnor where
the
order
is the subject of leave to appeal. The
legal effect is that
litigants
are restored to their original position as if the order under
appeal
had not been granted - The
appeal is dismissed with costs.

Delivered:

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JUDGMENT

MAZIBUKO AJ (MOKOSE et NYATHI JJ CONCURRING)

INTRODUCTION

[1] The litigation culminating in this appeal was launched in the court a quo by the appellant, which sought a declaratory order that the respondents are guilty of contempt of court, in that they failed to

comply with paragraphs 1 to 5 of the order granted by the Baqwa J on 18 December 2020, under case number 93439/2019 ('the court order'). The court a quo refused to grant the declaratory order as sought. Aggrieved by the court a quo's decision, the appellant appealed the order and judgment. Leave to appeal was granted on petition by the Supreme Court of Appeal. The appeal is opposed.

PARTIES

[2] The appellant, Matsi Law Chambers ('MLC'), is a law firm incorporated in terms of the Companies law under the directorship of an attorney, Mmatlou Lesley Matsi ('Matsi'), previously known as Matsi Mailula Inc.

[3] The first respondent is Lesiba Jeremiah Mailula ('Mailula'), an attorney practising at the second respondent.

[4] The second respondent is Lesiba Mailula Attorneys ('LMA'), a law firm in terms of the Legal Practice Act under the directorship of Mailula.

FACTUAL

BACKGROUND

[5] Mailula was employed as a litigation attorney by MLC until his resignation in February 2019 in pursuit of practice for his own account. On his departure, according to the separation agreement, no restraint of trade agreement was put in place. He was permitted to take over MLC clients based on the clients' preference as long as the taking over mandate procedure was followed.

[6] According to MLC, upon departure, without their authorisation, Mailula allegedly took certain original files. Various disputes arose between the parties, resulting in numerous court proceedings, including an unopposed application to this court by MLC seeking the return of files and other ancillary relief. Baqwa J granted the order in favour of MLC. The court order was partially complied with when the sheriff collected some of the files from LMA.

[7] In January 2021, Mailula and LMA brought an urgent application in two parts. Under Part A, they sought a stay of execution of the court order pending the finalisation of Part B, which was the rescission of the court order. Davis J dismissed the application on 15 January 2021.

[8] Mailula and LMA brought an application for leave to appeal. MLC also lodged an application seeking immediate execution of the court order to counter the suspension of the court order. Both applications were enrolled to be heard together in February. On the day of the hearing, only the costs issue was before the court due to the withdrawal of the leave to appeal application filed a few days before the hearing by Mailula and LMA. Only MLC attended court.

[9] Concerning the return of the rest of the files, MLC filed its contempt of court

application, stating that Mailula and LMA had failed to comply with the following paragraphs of the court order:

‘1 The first respondent is directed to return to his former employer, the applicant, within two weeks of the court order any of the original client case files that he (the first respondent) took from the applicant upon his resignation from the applicant.

2 The first respondent is directed to give the applicant, within 10 days of the court order, copies of termination of mandate documents and notices of substitution in respect of the clients of the applicant whose legal cases or matters the first respondent and/or the second respondent have been duly mandated by clients to take over from the applicant.

3 The first respondent and the second respondent are directed not to subject for taxation and party and party bill of costs in respect of any of the finalised matters that the first respondent and/or the second respondent have been properly mandated to take over from the applicant, unless and/or before they obtain and incorporate the applicant’s bill of costs for the disbursements paid or incurred and fees for the work done by the applicant. In this regard the applicant is ordered to submit to the second respondent its bill of costs within a period of two months after receiving the original case files from the respondents as directed in this order.

4 In the event that any client of the applicant duly terminated the mandate of the applicant in favour of the respondents It is confirmed that the applicant is entitled to the reimbursement for disbursements it paid and/or incurred and fees for the services it rendered in respect in each case file up to the date of such change or termination of mandate. In this regard and in the event that any client terminated the mandate previously given to the applicant a written document must be submitted by the respondents in proving same, failure which it is confirmed that the applicant still holds mandate to act for each client for all intents and purposes.

5 It is confirmed that even in the event that some clients terminated the mandates previously given to the applicant, the respondents had and still have no right to remove the original case files from the applicant, which files are confirmed as the property of the applicant on the basis of which the applicant will be able to prepare its bills of costs for each of those terminated or finalised files to ensure the applicant’s recovery of its file costs (so-called “disbursements”) and

accrued fees that the applicant is entitled to for the services it rendered up to the date of such termination of its mandate.'

- [10] In March, Mailula and LMA re-instated their application for leave to appeal against Davis J's judgment. Davis J dismissed their leave to appeal application. They filed a petition to the Supreme Court of Appeal with respect to an application for leave to appeal Davis J's judgment.
- [11] The contempt of court application by MLC, which formed the basis of the present matter, was refused by the court a quo under case number 12424/2021.

THE DECISION OF THE COURT A QUO

- [12] MLC's application pertained to Mailula and LMA's failure to comply fully with the court order. Mailula and LMA contended that they were not in contempt as the said court order was the subject of a leave to appeal.
- [13] What was before the court a quo for determination was whether Mailula and LMA were contemnors where the order is the subject of a leave to appeal.
- [14] Upholding the views expressed on behalf of Mailula and LMA, the court a quo dismissed the application for contempt of court with costs on the basis that Mailula and LMA had filed a petition in respect of an application for leave to appeal Davis J's judgment, which refused a stay of execution of the court order

granted by Baqwa J.

GROUND OF APPEAL

- [15] According to MLC, the appeal is based on the grounds that the court a quo erred in finding that :

[15.1] Mailula and LMA's pending Rule 45A and/or rescission application suspended the operation of the court order to the extent of giving them some reprieve not to comply with the court order.

[15.2] To the extent that MLC did not persist with its application to execute despite being aware of Mailula and LMA's intention to appeal against Davis J's judgment, Mailula and LMA can not be held in contempt of the court order.

ISSUE FOR

DETERMINATION

- [16] The question before this court is whether the court a quo was correct in finding that the court order was automatically and indirectly suspended by Mailula and LMA's application for leave to appeal the order of Davis J.

MLC'S

SUBMISSIONS

- [17] An argument advanced on behalf of MLC was that no application was ever brought or noted for leave to appeal against the court order, which is the order granted by Baqwa J. Both the Rule 45A and rescission applications challenging the court order were dismissed by Davis J and Lazarus AJ respectively. Further these applications did not suspend the operation of the court order.

MAILULA AND LMA'S

SUBMISSIONS

- [18] Mailula and LMA contended that MLC elected to bring the contempt of court order application instead of exploring other recourses, like a writ of execution, available to them. It was also argued on their behalf that the application for leave to appeal and or the petition thereof suspended the execution of the court order.

DISCUSSION

- [19] It is trite that an appeal court may interfere with a court a quo's decision only where it is based on misdirection of facts and/or law or where the court exercised its discretion improperly.
- [20] It is established law that an order or decision issued by a court binds all persons to whom and organs of state to which it applies.[1] It remains in force and effect until and unless it is overturned. The successful litigant may execute it.
- [21] In terms of Rule 45A of the Uniform Rules of Court,[2] the court may, on application, suspend the operation and execution of any order for such period as it may deem fit: Provided that in the case of an appeal, such suspension is in compliance with section 18 of the Act.
- [22] Section 18 of the Superior Court Act,[3] reads:
- (1) Subject to subsections (2) and (3), and unless the court under exceptional circumstances orders otherwise, the operation and execution of a decision which is the subject of an application for leave to appeal or of an appeal, is suspended pending the decision of the application or appeal.
 - (2) Subject to subsection (3), unless the court under exceptional circumstances orders otherwise, the operation and execution of a decision that is an interlocutory order not having the effect of a final judgment, which is the subject of an application for leave to appeal or of an appeal, is not suspended pending the decision of the application or appeal.

(3) A court may only order otherwise as contemplated in subsection (1) or (2), if the party who applied to the court to order otherwise, in addition proves on a balance of probabilities that he or she will suffer irreparable harm if the court does not so order and that the other party will not suffer irreparable harm if the court so orders.

[23] Suspension of an order under appeal is automatic, except in exceptional circumstances, including those provided in section 18(3) of the

Superior Courts Act. The litigants are restored to their original position as if the order under appeal had not been granted.

[24] The evidence is that MLC brought the contempt application on 9 March. On 31 March, Mailula and MLA filed their application for leave to appeal. In June, Davis J dismissed their leave to appeal application. They filed a petition to the Supreme Court of Appeal with respect to an application for leave to appeal Davis J's judgment.

[25] The application for contempt of court was refused by the court a quo on 10 September. At that time, the Supreme Court of Appeal had not made an order pertaining to the petition.

[26] Notwithstanding its knowledge that the court order had become the subject of an appeal application before Davis J and subsequently the Supreme Court of Appeal, MLC persisted with its contempt of court application. In my view, there was no justification for MLC to proceed with the contempt of court knowing that the order was subject of the application for leave to appeal.

[27] There is nothing in the language of Section 18 of the Superior Court Act to suggest that an application to execute may only be brought when an application for leave to appeal is launched. Put differently, an application to execute an order under Section 18 can be made even if an application for leave to appeal has not been made. A mere indication of intent to apply for leave to appeal, or a reasonably anticipated application for leave to appeal constitutes grounds for leave to executed.[4] To the extent that in terms of section 18(1) and 18(3) of the Superior Courts Act, MLC is entitled, and nothing precluded it from

pursuing an application to enforce an order even though there was a pending application or petition in respect of leave to appeal, MLC brought no such application. Therefore, the court order remained suspended and could not be executed.

[28] The legal effect of an application for leave to appeal or appeal on a court order is suspension of that order. I agree with the court a quo that the order granted by Baqwa J could not be executed as the order refusing its stay had become the subject of an application for leave to appeal.

[29] In my respectful view, the court a quo correctly found that Mailula and LMA are not in contempt of the court order that is suspended by an application for leave to appeal and or the pending petition to the Supreme Court of Appeal. Consequently, the court a quo was justified in refusing the contempt of court application and did not err in its judgment and order.

COSTS

[30] There is no reason why the court should not follow the principle that costs should follow the result. The matter is of great importance to the parties, and both chose to engage the services of counsel. Accordingly, such costs awarded will include the costs consequent upon the engagement of counsel.

THE ORDER

[31] In the circumstances, I grant the following order:

ORDER:

[31.1] The appeal is dismissed with costs, including that occasioned by the employment of counsel awarded at Scale B.

NGM MAZIBUKO AJ

ACTING JUDGE OF THE HIGH COURT

GAUTENG DIVISION, PRETORIA

I AGREE, AND IT IS SO ORDERED,

SNI MOKOSE J

JUDGE OF THE HIGH COURT

I AGREE,

JS NYATHI J

HEARD ON: 5 FEBRUARY 2025

JUDGEMENT

DELIVERED ON: MAY 2025 COUNSEL FOR THE APPELLANT: ADV. M MAPHUTHA INSTRUCTED BY: MATSI LAW CHAMBERS COUNSEL FOR THE RESPONDENTS: ADV. N MOROPENE INSTRUCTED BY: LESIBA MAILULA ATTORNEYS

[1] Section 165 (5) of the Constitution of the Republic of South Africa, 1996 [No. 108 of 1996].

[2] Uniform Rules of Court, Supreme Court Act, Act 59 of 1959.

[3] Act 10 of 2013.

[4] Fidelity Security Services (Pty) Ltd vs Mogale City Local Municipality 2017(4)SA 207 (GJ) at para 14.

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