

SOUTH AFRICA / JUDGMENT

Mlezana and Others v South African Civic Organisation (3208/18) [2018] ZAECGHC 114 (12 November 2018) [2018] ZAECGHC 114

COURT

Eastern Cape High Court, Grahamstown

BEFORE

Plasket

CASE / FILE NUMBER

3208/18

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IN

THE HIGH COURT OF SOUTH AFRICA

EASTERN

CAPE DIVISION, GRAHAMSTOWN

Case no. 3208/18

Date heard: 6/11/18

Date of order: 6/11/18

Date reasons

furnished: 12/11/18

Not reportable

In

the matter between:

ZOLA

MLENZANA

First

Applicant

MAKHAYA

SOMHLAHLLO

Second

Applicant

CHRISTOPHER

MAJIKAZANA

Third

Applicant

ANTHONY

DANCEY

Fourth

Applicant

and
SOUTH
AFRICAN NATIONAL CIVIC ORGANISATION First
Respondent
RICHARD
MDAKANE N.O.
Second
Respondent
ZUKILE
LUYENGE N.O.
Third
Respondent

JUDGMENT

Plasket J:

- [1] The applicants, who are members of the first respondent, the South African National Civic Organisation (SANCO), brought an urgent application in which they sought an order setting aside a decision of the national executive committee of SANCO that had removed them and others from office as members of the provincial executive committee.
- [2] The application was filed on 26 October 2018. It was to be heard on 1 November 2018. On that day, it was postponed to 6 November 2018 to allow the applicants to file their replying affidavit.
- [3] At the hearing of the matter on 6 November 2018, only the issue of urgency was argued. I decided that the matter was not urgent and struck it from the roll, with costs. I undertook to furnish reasons for my decision. These are my reasons.
- [4] Rule 6(12) of the uniform rules regulates urgent applications. To the extent relevant, it provides:
 - ‘(a) In urgent applications the court or a judge may dispense with the forms and service provided for in these rules and may dispose of such matter at such time and place and in such manner and in accordance with such procedure (which shall as far as practicable be in terms of these rules) as to it seems meet.
 - (b) In every affidavit or petition filed in support of any application under paragraph (a) of this sub-rule, the applicant shall set forth explicitly the circumstances which he avers render the matter urgent and the reasons why he claims that he could not be afforded substantial redress at a hearing in due course.’
- [5] Writing about the purpose of rule 6(12), Norman Manoim said:[1]

‘The judicial system, not unlike the private individual, does not take kindly to people who push to the front of the queue. The doctrine of urgency was developed and encapsulated in the rules of court in order to allow those for whom the wait in the queue would not be worth it unless they push in front, to do just that without attracting dirty looks from those behind them.’

[6] The practice and procedure of urgent applications was considered in detail in *Luna Meubel Vervaardigers (Edms) Bpk v Makin & another (t/a Makin Furniture Manufacturers)*.^[2] Coetzee J stated:^[3]

‘Practitioners should carefully analyse the facts of each case to determine, for the purposes of setting the case down for hearing, whether a greater or lesser degree of relaxation of the Rules and of the ordinary practice of the Court is required. The degree of relaxation should not be greater than the exigency of the case demands. It must be commensurate therewith. Mere lip service to the requirements of Rule 6(12)(b) will not do and an applicant must make out a case in the founding affidavit to justify the particular extent of the departure from the norm, which is involved in the time and day for which the matter be set down.’

[7] In *I L & B Marcow Caterers (Pty) Ltd v Greatermans SA Ltd & another; Aroma Inn (Pty) Ltd v Hypermarket (Pty) Ltd & another*,^[4] Fagan J stated:

‘It is clear from the requirements set out in Rules 27 and 6(12) that the Court's power to abridge the times prescribed and to accelerate the hearing of the matters should be exercised with judicial discretion and upon sufficient and satisfactory grounds being shown by the applicants. The major considerations normally and in these two applications are three in number, viz the prejudice that applicants might suffer by having to wait for a hearing in the ordinary course; the prejudice that other litigants might suffer if the applications were given preference; and the prejudice that respondents might suffer by the abridgment of the prescribed times and an early hearing.’

[8] Later in the judgment, the learned judge, with reference to prejudice to other litigants in general, held that the issue boiled down to whether the harm alleged by an applicant in an urgent application was the kind of harm that justified ‘the disruption of the roll and the resultant prejudice to other members of the litigating public’

whose matters would take longer to be heard.^[5]

[9] The applicants describe themselves respectively as the ‘elected Chairperson’, the ‘elected Deputy Chairperson’, the ‘elected Secretary’ and the ‘elected Treasury’ of SANCO’s Eastern Cape provincial executive committee. (They refer to this structure as ‘SANCO EC PEC’.)

[10] The first applicant stated that he had been ‘authorised to institute these proceedings and depose to this affidavit on behalf of all of the persons elected to the SANCO EC PEC at the Provincial Conference held on 27 and 28 January 2018’. He listed the names of 25 people. None of these people have deposed to affidavits or executed powers of attorney and neither is any resolution attached to the papers that may constitute authority for the first applicant to represent them. No explanation has been given why they are not able to litigate in their

own names.[6] They are consequently not parties to the application and not before the court in any manner or form.

- [11] The applicants alleged that the matter was urgent for three reasons. First, it had to be heard urgently because a ‘protracted leadership dispute will have negative effects upon the ability of SANCO to carry out its functions and obligations in the Eastern Cape’ with a consequent ‘unduly negative impact’ on its activities. Secondly, the matter was urgent because the protracted leadership dispute ‘has the potential to widen factions’ in SANCO. Thirdly, ‘the urgency of the matter stems from the fact that ‘[v]arious important political processes are presently being conducted to which processes the SANCO EC PEC members are party’.
- [12] I do not believe that leadership disputes, widening factionalism and ongoing organisational obligations render the matter urgent. The underlying maladies of the leadership disputes and factionalism will not be remedied by a decision, whether as a matter of urgency or in the ordinary course, on whether the national executive committee acted lawfully in removing the applicants from office. The ongoing organisational obligations can continue to be performed by whoever holds positions of authority for the time being.
- [13] The forms of prejudice relied on by the applicants are not forms of prejudice that justify the applicants jumping the queue and prejudicing those who are waiting patiently for their matters to be heard.
- [14] For the above reasons the matter was struck from the roll with costs for want of urgency.

C Plasket

Judge of the High Court

APPEARANCES

For the applicants:

A Moorhouse

Instructed by

McWilliams & Elliott Inc, Port Elizabeth

N N Dullabh & Co, Grahamstown

For the respondents:

M Maunatlala

KMNS Inc, Johannesburg

Yokwana Attorneys, Grahamstown

- [1] Norman Manoim ‘Principles Regarding Urgent Applications’ in Nicholas Haysom and Laura Mangan (eds) *Emergency Law* at 79.

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- [2] Luna Meubel Vervaardigers (Edms) Bpk v Makin & another (t/a Makin Furniture Manufacturers) 1977 (4) SA 135 (W).
- [3] At 137E-G.
- [4] I L & B Marcow Caterers (Pty) Ltd v Gretermans SA Ltd & another; Aroma Inn (Pty) Ltd v Hypermarket (Pty) Ltd & another 1981
- (4) SA 108 (C) at 112H-113A.
- [5] At 114A-B.
- [6] See Wood & others v Ondongwa Tribal Authority & another 1975 (2) SA 294 (A).
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Prepared on 14 October 2026 · Esheria