

SOUTH AFRICA / JUDGMENT

Mokgoko v Mokgoko (M153/2023) [2024] ZANWHC 181 (27 May 2024)

[2024] ZANWHC 181

COURT

North West High Court, Mafikeng

BEFORE

FMM Reid

CASE / FILE NUMBER

M153/2023

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IN THE HIGH COURT OF SOUTH AFRICA

NORTH WEST DIVISION, MAHIKENG

CASE NUMBER: M153/2023

Reportable: NO

Circulate to Judges: NO

Circulate to Magistrates: NO

Circulate to Regional Magistrates: NO

In the matter between:-

TEBOGO AGNES MOKGOKO

Applicant

and

MAMOLEFE VICTORIA MOKGOKO

Respondent

This judgment is handed down electronically by means of distribution via e-mail to the legal representatives of the parties. The date and time that the judgment is deemed to be handed down is 27 May 2024 at 10h00

JUDGMENT

FMM REID J

- [1] The applicant and respondent are sisters whose mother has passed away in December 2018. The applicant is the appointed executrix of the deceased estate of their mother. The application is for final interdictory relief that mainly relates to the residence of the deceased, which is occupied by the respondent. The bulk of the relief sought is that the respondent is to be interdicted from interfering with the execution of the applicant's duties as executrix.
- [2] The respondent opposed the application on the basis that there was no interference with the duties of the applicant as executrix.
- [3] The matter was initially set down for hearing on 13 July 2023 and postponed to 17 August 2023. At that stage the respondent has not filed an answering affidavit and on 17 August 2023 the matter was postponed to 9 May 2024. The respondent was ordered to file an answering affidavit on or before 15 August 2023, which was duly done. The applicant elected to not file a replying affidavit.
- [4] The applicant, despite being dominis litis, failed to file heads of argument or a practice note. In addition to the aforesaid, the court documents were not indexed and paginated as directed in the Practice Directives of this Division.
- [5] On 9 May 2024 there was no appearance for the applicant in court. I have satisfied myself that the applicant is duly aware of the proceedings on the following bases:
- 5.1. The applicant is legally represented and was present on the previous postponements.
- 5.2. The opposing affidavit was served on the attorneys of the applicant.
- 5.3. The practice note of the respondent's attorney was served on the applicant's attorney on 6 May 2024 and the practice note indicates that the matter is enrolled for today, 9 May 2024.
- 5.4. There is no notice of withdrawal of the attorney of record of the applicant.
- 5.5. Based on the above, I am satisfied that the applicant and her legal representatives are aware of the proceedings of 9 May 2024.
- [6] Mr Oelofse, acting for the respondent, mentioned in his practice note that the matter is not proceeding and should be removed since it has not been indexed and paginated by the applicant. The practice note further records that "the documents need not be read, on the basis that "(f)urther papers need not be filed as the applicant was removed as the executrix of the deceased estate, and therefore has no locus standi to bring the application..."
- [7] In consideration of the above, it appears to me that the applicant has abandoned the application.

- [8] I requested Mr Oelofse to address me on any reasons why the matter should be removed, and not be dismissed. He conceded that a dismissal would bring finality in this litigation process. His further submission was that it appears that the applicant has lost interest in pursuing the application. I agree.
- [9] It serves no purpose to remove a matter where there appears to be no reasonable foreseeable prospect that the party who is dominis litis has any intention in bringing the litigation to finalisation. Should the matter be removed, it will remain in the court system of active matters. The reality is that the matter appears to be abandoned.
- [10] Any party in litigation is entitled to a resolution and finalisation of the litigation without any undue delay. This is one of the principles of administrative justice. To my mind it serves no purpose to postpone a matter that appears to have been abandoned.
- [11] For the abovementioned reasons, I hold the view that it is in the interest of justice for the matter be brought to finality.
- [12] The applicant claims that the respondent interferes with her duties as executrix of the deceased estate of their mother. This is denied by the respondent.

Legal position

- [13] The requirements for an interdict are trite, being are a clear right to the relief granted, an act of interference and no other remedy. See: Setlogelo v Setlogelo 1914 AD 221 at 227.
- [14] It was confirmed as follows in Ellaurie v Madrasah Taleemuddeen Islamic Institute and Another 2021
- (2) SA 163 (KZD) that an interdict is not to be granted lightly:
- “[21] I am aware that an interdict is an extraordinary remedy which is not granted lightly. The requirements necessary for a final interdict are a clear right, an act of interference and no other remedy.”*
- [15] In application of the principle set out in Plascon Evans v van Riebeeck Paints (Pty) Ltd 1984 (3) SA 612 (A), the version of the applicant is to be tested against the version of the respondent. The court is to come to a conclusion based on the allegations made by the applicant which allegations are admitted by the respondent. If the allegations made by the applicant, and admitted by the respondent, does not satisfy the requirements of an interdict, the applicant is not entitled to an interdict.
- [16] On the applicant’s version, taken together with the facts admitted by the respondent, the applicant does not make out a case for interdictory relief as requested. The applicant has not proven that she has a clear right to the relief sought, or that there was an act of interference from the respondent.
- [17] In the premise, the application stands to be dismissed.

Cost

[18] The normal principle is that cost is to be paid by the unsuccessful party. I find no reason to deviate from this principle.

[19] In the answering affidavit the respondent requests that the application be dismissed with costs. The applicant is thus aware that a cost order is sought against her, should the application be dismissed.

[20] On the basis of the above, I find that a cost order against the applicant is warranted.

Order

I consequently make the following order:

(i) The application is dismissed with costs.

FMM REID

JUDGE OF THE HIGH COURT

NORTH WEST DIVISION MAHIKENG

DATE OF HEARING: 9 MAY 2024 DATE OF JUDGMENT: 27 MAY 2024 FOR THE APPLICANT: NO APPEARANCE ATTORNEYS OF RECORD: KJ KETSE ATTORNEYS 639 CNR ROBERT SOBUKWE & MOLAMU STREET MOTSHIA 2737 REF: KJK/M.2477/EST TEL: 071 702 1876 / 067 871 2994 FOR THE RESPONDENT: MR OELOFSE ATTORNEYS OF RECORD: CJP OELOFSE ATTORNEYS 9 AERODOME CRESCENT MAHIKENG TEL: 018 632 2744 EMAIL: mhk3@cjpo.co.za

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Prepared on 14 October 2026 · Esheria