

SOUTH AFRICA / JUDGMENT

Mokhele and Another v South African Legal Practice Council (5511/2022) [2023] ZAFSHC 94 (27 March 2023) [2023] ZAFSHC 94

COURT

Free State High Court, Bloemfontein

BEFORE

C Reinders, AS Boonzaaier

CASE / FILE NUMBER

5511/2022

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IN

THE HIGH COURT OF SOUTH AFRICA,

FREE

STATE DIVISION, BLOEMFONTEIN

Case

number: 5511/2022

Reportable:

NO

Of

Interest to other Judges: NO

Circulate

to Magistrates: NO

In

the matter between:

LEBOHANG

MICHAEL MOKHELE 1ST

APPLICANT

LM

MOKHELE INCORPORATED

2ND

APPLICANT

and

THE

SOUTH AFRICAN LEGAL PRACTICE COUNCIL RESPONDENT

In

re

THE

SOUTH AFRICAN LEGAL PRACTICE COUNCIL APPLICANT

LEBOHANG

MICHAEL MOKHELE 1ST
RESPONDENT
LM
MOKHELE
INCORPORATED 2ND
RESPONDENT

CORAM: C
REINDERS J et AS BOONZAAIER AJ
HEARD

ON: 24 MARCH 2023

JUDGMENT

BY: AS BOONZAAIER AJ

DELIVERED ON: This judgment was handed down electronically by circulation to the parties' representatives by email and release to SAFLII. The date and time for hand-down are deemed to be 10:00 on 27 March 2023.

INTRODUCTION:

- [1] This is an application for leave to appeal by Mr Lebohang Michael Mokhele (the applicant in this application and the first respondent in the main application) and LM Mokhele Incorporated (the second applicant in this application and the second respondent in the main application: "the firm") against the order ("the order") granted by myself and Reinders J, on 22 November 2023.
- [2] The South African Legal Practice Council ("the LPC") is the Applicant in the main application. It sought orders in terms whereof, amongst others, Mr Mokhele was suspended from practicing as a legal practitioner (as attorney) pending an application to be brought by the LPC to have his name struck off the roll of practising Legal Practitioners in terms of the Legal Practice Act, No. 28 of 2014 ("the LPC Act"). The order was granted as will be reflected herein below.
- [3] Mr Mokhele (as sole director of the firm) contends that the court misdirected itself, and the grounds stated in the application for leave to appeal (filed on 2 December 2022) reads verbatim as follows:

"1. The court erred in not finding and considering that the "URGENT SECTION 43 REPORT" was compiled in an irregular manner and by relying on documentations and information illegally sourced by the Respondent;

2. The Honourable Court erred in not considering that, the Applicants herein submitted proof and evidence that, the so called “URGENT SECTION 43 REPORT” is an illegally construed report in that, the Respondent, transmitted a letter dated the 05th day of OCTOBER 2022, in which letter it was indicated that, the Investigation Committee sat on the said date and considered that

there is a prima facie proof of misconduct against the First Application and they are in the process of instituting disciplinary hearings against him and on the other hand, the honourable Court was faced with an application containing “URGENT SECTION 43 REPORT” which was compiled illegally and which report is dated the 20th day of OCTOBER 2022.

3. The court erred in considering the Respondent’s application solely based on the fact that, it is only an interim order thereby overlooking the fact that, the said interim order has the effect of a final order in that, the First Applicant, alternatively, the Applicants are incapable of practicing their profession of choice pending the fulfilment of an uncertain future event;
4. In considering the said application, the Honorable Court erred in overlooking the fact that, the Respondent’s Council is not properly constituted and any decision and/or resolution taken by them are automatically invalid;
5. The Honorable Court further erred in overlooking that, in instituting the application, no Council Resolution was attached on the founding papers and the only thing that the deponent, MARTUS DE WET relied upon in their Replying Affidavit are e-mails exchanged between some of the Council members and which e-mails were exchanged on different dates. Such constituted the application to be materially defective because, the law requires that, there must be a formal Council seating in which “a resolution” is taken and which was not the case herein.
6. The said report violated the First Applicant’s rights to be heard and to make representations prior to it being released, thereby violating the First Applicant’s to a just and fair administrative action as contained in terms of PAJA, the Constitution of the Republic of South Africa and the rules of natural justice and the rule of law, including the common law;
7. That the court did not consider the pending leave to Appeal before the Supreme Court of Appeal and which has the effect of confirming and/or dismissing the Respondent’s leave to Appeal, considering that, what is requested therein, is the same order as what is requested in these proceedings.
8. In granting the order, the Honorable Court erred in considering that the interim order so handed down will forever remain an interim order even after it has been confirmed, should it be. In which, its wording will always be read as follows, should same be confirmed by a competent court:

“A rule nisi be hereby confirmed that, the First Respondent is suspended from the practice of legal practitioners of the High Court of South Africa pending an application to be launched by the Applicant to have the name of the First Respondent struck from the roll of Legal Practitioners of the High Court of South Africa”.

9. The court erred in finding that, the suspension of the First Application is not prejudicial, whereas in truth and in fact, the said suspension has the effect of a final order and gravely prejudicial to the First Application in that, his entire practice has been placed in possession of the curator, whom by the execution of her duties, will need the guidance of the First Application in servicing the Clients of the First Application.
10. It should be noted that, the order so handed down is selectively suspending part of the practice of the Application in that, the order is selective in suspending the estate practice of the First Applicant and not the entire practice.
11. The order handed down by the Honorable Court is not supported by any evidence which was placed before it.
12. All the above considered, it will be submitted that another court, faced with the same facts, will arrive at a different

conclusion.

13. In the circumstances, the proposed appeal has reasonable prospects of success.
14. There is also a compelling reason why leave to appeal should be granted to the Applicants, namely:
 - 14.1 The Honorable Court considered a status application and made a ruling which affects the Applicants without holistically considering the evidence placed before it and only relying on the fact that, the order will not be prejudicial because it is only a provisional order, thereby handing down an ex-tempore order;
 - 14.2 The court of appeal will also have to rule authoritatively on threshold to be met by the Applicant when bringing an application in terms of section 43 of the LEGAL PRACTICE ACT, without affording the affected party therein a right of response as far as the contents of the said report are concerned.
 - 14.3. The Court of Appeal will also have to consider and rule authoritatively the irregular procedure adopted when considering the investigation in terms of Section 43 of the LEGAL PRACTICE ACT, which its current status violates the right to a just and open administrative action.”

On the day of hearing of this appeal, Mr Mokhele filed a document titled “Amended Notice of Application for leave to appeal...”

to include three further paragraphs (quoted verbatim) as follows:

15. The changed circumstances are compelling grounds for granting to the Applicant Leave to Appeal. The foremost cornerstone of the Respondent's application for the suspension of the First Applicant's from practicing as Legal Practitioner, was the misappropriation of trust funds entrusted on the First Applicant by his client complainant. The cardinal point made was that the Client complainant was impoverished and conversely the First Applicant was enriched, as a result of the purported misappropriation which was arrived at on very tentative grounds. It was not then broached to the Court that the First Applicant has reversed the impoverishment and repaid to the Client Complainant all and any money owed to her with the result that the rationale for the suspension had been extinguished. It logically follows that the suspension premised on the assumption that the pecuniary loss on the part of the client was permanent was the motivating factor exacting suspension.
16. It is respectfully submitted that the changed circumstances exacted a reconsideration, revisiting and/or relook of the matter. This may occur at the level of the Respondent if the matter is remitted. On the other hand, if Leave of Appeal is granted the Applicants shall make an application to tender new evidence.
17. It is humbly submitted that the interest of justice favors the granting of the relief sought herein."

THE TEST FOR LEAVE TO APPEAL:

- [4] An application for leave to appeal is regulated by section 17(1) of the Superior Courts Act of 2013 which provides as follows:

"Leave to appeal may only be given where the Judge or Judges concerned are of the opinion that- (a)(i) the appeal would have a reasonable

prospect of success; or (ii) there is some other compelling reason why the appeal should be heard, including conflicting judgments on the matter under consideration;(b) the decision sought on appeal does not fall within the ambit of Section 16 (2) (a); and (c) where the decision sought to be appealed against does not dispose of all the issues in the case, the appeal would lead to a just and prompt resolution of the real issues between the parties"

- [5] The threshold for the granting of leave to appeal has been raised by this section. The former test that leave should be granted if there is a reasonable prospect of success that another Court might come to a different finding had been abolished. A court hearing the application must now be satisfied that the appeal would have a reasonable prospect of success.
- [6] The SCA in *Smith v S*,^[1] per Plasket AJA, had occasion to consider what constituted reasonable prospects of success in section 17(1)(a)(i) and held:

"What the test of reasonable prospects of success postulates is a dispassionate decision, based on the facts and the law that a court of appeal could reasonably arrive at a conclusion different to that of the trial court. In order to succeed, therefore, the Respondent must convince this court on proper grounds that he has prospects of success on appeal and that those prospects are not

remote but have a realistic chance of succeeding. More is required to be established than that there is a mere possibility of success, that the case is arguable on appeal or that the case cannot be categorised as hopeless. There must, in other words, be a sound, rational basis for the conclusion that there are prospects of success on appeal.”

[7] In respect of Mr Mokhele as sole director of LM Mokhele Incorporated (the second applicant in this application and the second respondent in the main application: “the firm”) we made the following order:

“...2. A rule nisi be issued, returnable on 20 April 2023 at 09h30 or as soon thereafter as the Applicant’s legal representatives may be heard, calling upon the Respondents to show cause, if any, why the following orders should not be granted as final orders:

2.1. LEBOHANG MICHAEL MOKHELE (who is hereafter referred to as “the First Respondent”) be suspended from the practice of legal practitioners of the High Court of South Africa pending an application to be launched by the Applicant to have the name of the First Respondent struck from the roll of Legal Practitioners of the High Court of South Africa.

2.2. The First Respondent or any other employee of the Second Respondent be prohibited, with immediate effect, from operating and dealing with any of the trust banking accounts of the First Respondent’s practice(s), the banking accounts of any deceased estates in respect of which the First Respondent has been appointed as executrix or Master’s representative and any banking accounts of any insolvent estates in respect of which the First Respondent has been appointed as a liquidator.

2.3 The First Respondent shall immediately surrender and deliver to the Registrar of this Honourable Court his certificate of admission as a legal practitioner of the Honourable Court.

2.4 In the event of the First Respondent failing to comply with paragraph 2.3 of this order within two (2) days from the date of service of this order on him, the sheriff be and is authorised and directed to take possession of the certificate and to hand it to the Registrar of this Honourable Court.

2.5 Margarette van Wyk and her successor(s) in-title be and is appointed as curator bonis (“the Curator”) of the practice of the First Respondent and to administer and control the trust accounts of the First Respondent and any accounts relating to insolvent and deceased estates and any deceased estate and any estate under Curatorship connected with the First Respondent’s practice as an attorney and including the separate banking accounts opened and kept by the First Respondent at a bank in the Republic of South Africa in terms of section 86(1) of the Legal Practice Act No 28 of 2014 (“the Act”) and/or any separate savings or interest-bearing accounts as contemplated by section 86(3) and/or section 86(4) of the Act, in which monies from such trust banking accounts have been invested by virtue of the provisions of the said sub-sections or in which monies in any manner have been deposited or credited as set out in paragraph 2.7 hereunder.

2.6 The Applicant is exempted from furnishing security for the performance of their obligations as curator bonis.

2.7 The First Respondent is ordered to deliver all of the records relating to his legal practice, which for all the purposes of this order, but without limitations, will include all accompanying records, files, correspondence and documents which are directly or indirectly relevant to or which contain particulars of information relating to:

- (a) Any monies received, held or paid by the First Respondent for or on account of any person;
- (b) Any monies invested by the First Respondent in terms of any provisions of section 86 of the Act;
- (c) Any interest on monies so invested in terms of section 86(3) or section 86(4) of the Act;
- (d) Any estate of a deceased person administered by the First Respondent whether as executor or on behalf of the executor, in terms of the provisions of the Administration of Estate Act, Act 66 of 1965;
- (e) Any estate in which the First Respondent acted as or on behalf of the Curator to administer the property of a minor child or any other person in terms of section 72 of the Administration of Estate Act, Act 66 of 1965;
- (f) Any insolvent estate administered by the First Respondent as trustee or on behalf of the trustee in a trust in terms of the Insolvency Act, Act 24 of 1936;
- (g) Any trust administered by the First Respondent as trustee(s), or on behalf of the trustee in terms of the Trust Property Act, Act 57 of 1988;
- (h) Any company liquidated in terms of the Companies Act, Act 61 of 1973, administered by the First Respondent as Liquidator(s) or on behalf of the liquidator;
- (i) Any Close Corporation liquidated in terms of the Close Corporation Act, Act 69 of 1984, administered by the First Respondent as liquidator or on behalf of the liquidator;
- (j) The First Respondent's practice as an attorney/ legal practitioner of this Court, and any related files of any Client.

2.8. Should the First Respondent fail to comply with the provisions of the preceding paragraph 2.7 of this order on service thereof upon him or after a return by the person entrusted with the service thereof that he/she has been unable to effect service thereof on the Respondents (as the case may be), the sheriff for the district in which such accounting records, records, files and documents are, be empowered and directed to search for and to take possession thereof wherever they may be and to deliver them to such Curator.

2.9. The said Curator shall have the following powers:

- (a) To hand over any said records to any person entitled thereto, as soon as she has satisfied herself that the fees and disbursements in connection thereof have been paid or satisfactorily secured, or that same are no longer required;
- (b) To accept a written undertaking by a trust creditor to pay such amount as may be due to the First Respondent, either on taxation, assessment or by agreement, as satisfactory security for the purpose of paragraph 2.9(a) above, provided that such written undertaking incorporates a domicilium citandi et executandi of such creditor;
- (c) To require that any records so handed over, be delivered back to her if in her sole and absolute opinion, she considers them to be relevant to and (including any possible anticipated or threatened claim against her as curator bonis and/or the First Respondent clients and/or the Legal Practitioners Fidelity Fund ("the Fund");
- (d) To administer and control all of the First Respondent trust account(s) which for the purpose of this Order shall include:
 - (i) The accounts relating to any estate, curatorship, trust or company, referred to in paragraph 2.6 hereof;
 - (ii) Any and all banking accounts opened and kept by the First Respondent (or on the First Respondent's behalf) in terms of any provision contained in the Act or any of the Acts referred to in paragraph 2.5 above.
- (e) Subject to the approval of the Board of Control of the Fund ("the Board"), to sign and endorse cheques, and/or I withdrawal forms and generally to operate upon the said trust accounts, but only to such extent and for such purposes as may be necessary to bring completion to current instructions in which the First Respondent was acting as at the date of his suspension;
- (f) Subject to the approval of the Board, to recover and receive and, if I necessary in the interest of persons having lawful claims upon the said trust accounts and/or invested by the First Respondent in respect of monies held, received and/or invested by the First Respondent in terms of section 86(2) and 86(3) of the Act ("trust monies") to take any legal proceedings which may be necessary for the recovery of money which may be due to such persons in respect of incomplete transactions in which the First Respondent may have been concerned and which may have been wrongfully and unlawfully paid from the said trust accounts and to receive such monies and to pay same to the credit of the said trust accounts;
- (g) To ascertain from the First Respondent's records the names of all persons on whose account the First Respondent appears to hold or to have received trust monies ("trust creditors");
- (h) To call upon such trust creditors to furnish proof, information and/or affidavits as she may require to enable her, acting in consultation with and subject to the requirements of the board, to determine whether any such trust creditors have a claim in respect of money in the said accounts, and if so, the amount of such claim;

- (i) Subject to the approval of the Board, to admit or reject in whole or in part, the claims of any such trust creditors without prejudice to such trust creditor's right to access to the civil courts;
- (j) Subject to the approval of the Board, to pay such claims as she may consider lawfully due;
- (k) In the event of there being any surplus in the said trust accounts after payment of such claims, to utilise such surplus to settle or reduce as the case may be, firstly any claim of the fund in terms of section 86(5) of the Act in respect of any interest therein referred to and, secondly without prejudice to the rights of the First Respondent's creditors, the costs, fees and expenses, or such portion thereof as has not already been separately paid by the Respondent to the Applicant and, if there is any balance left after payment in full of all such claims, costs, fees and expenses, to pay such balance to the fund;
- (l) In the event of there being insufficient trust monies in the said accounts to pay in full the claims the claims of the trust creditors as reflected in the records of the First Respondent:
 - (i) Subject to the approval of the Board, to close the said accounts and to pay the credit balances therein to the fund and to require such credit balances therein to be placed to the credit of a special suspense account in the name of the First Respondent in the Fund's books;
- (ii) To refer the claims of all trust creditors to the Board to be dealt with in terms of the provisions of the Act;
- (iii) To authorise the Board to credit the credit balances referred to above to its "paid claims account" when the Funds has paid, in terms of Section 55 of the Act, admitted claims of the trust creditors of the First Respondent in excess of such credit balances, provided that, notwithstanding the foregoing, the Board in its discretion shall be entitled to transfer to its "paid claims account" the amounts of any claims as and when admitted and paid by it.
- (m) Subject to the approval of the chairperson of the Fund, to appoint nominees or representatives and/or consult with and/or engage the services of attorneys, counsel, accountants and and/or any such other person where considered necessary to assist her in carrying out of her duties as curator bonis;
- (n) To render from time to time returns to the Board showing how the said accounts have been dealt with until such time as the Board notifies her that she may regard her duties as curator bonis as discharged.

2.10. The First Respondent shall within 6 (six) months after having been requested to do so by the Curator, or within such longer period as the Curator may agree to in writing, satisfy the Curator, by means of the submission of taxed bills of costs or otherwise, of the amount of the fees and disbursements due to the First Respondent in respect of his practice, and should he fail to do so, he shall not be entitled to recover such fees and disbursements from the Curator without prejudice, however, to such rights (if any) as he may have against the trust creditor(s) concerned

for payment or recovery thereof;

2.11. A bill of costs drawn on the High Court scale of attorney and client costs taxed by the Registrar of this Court (who is authorised to do so) *mutatis mutandis* as if the Curator and the responsible officials of the Applicant in discharging their duties as contemplated in this order had acted as attorneys, shall constitute proof of their reasonable fees and disbursements ("the Curatorship fees and disbursements") and that the Registrar be authorised to issue a writ of execution for payment thereof by the First Respondent;

2.12. The Curatorship will terminate when the Curator receives a final written discharge from such duties from the Applicant consequent upon the Curator filing with the Applicant a final report and account, together with supporting vouchers, in respect of the execution of the Curator's duties in terms of this Order.

2.13. The First Respondent be and is hereby directed:

- (a) to pay, in terms of section 87(2) of the LPA, the reasonable costs of the inspection of the accounting records of the Respondents;
- (b) to pay the Curatorship fees and disbursements;
- (c) to pay the expenses relating to the publication of this order or an abbreviated version thereof.

2.14. First Respondent be and is hereby removed from office as –

- (a) Executor of any estate of which First Respondent has been appointed in terms of section 14(1) read with section 54(1)(a)(v) of the Administration of Estates Act, No 66 of 1965 or the estate of any other person referred to in section 72(1) thereof;
- (b) Curator or guardian of any minor or other person's property in terms of Section 72(1) read with section 54(1)(a)(v) and section 85 of the Administration of Estates Act, No 66 of 1965;
- (c) trustee of any insolvent estate in terms of section 59 of the Insolvency Act, No 24 of 1936;
- (d) liquidator of any company in terms of section 379(2) read with 379(e) of the Companies Act, No 71 of 2008;
- (e) trustee of any trust in terms of section 20(1) of the Trust Property Control Act, No 57 of 1988;
- (f) liquidator of any close corporation appointed in terms of section 74 of the Close Corporations Act, No 69 of 1984;
- (g) administrator appointed in terms of section 74 of the Magistrates' Court Act, No 32 of 1944.

2.15. The First Respondent is ordered to pay the costs of this application on an attorney and own client scale, including the costs occasioned by the employment of Counsel.

2.16. The orders in paragraphs 2.1 to 2.12 and 2.14 above shall operate as interim orders with immediate effect.”

[8] From a reading of the order it is clear that it is an interim order pending the return date. We agree with the similar conclusion of the nature of the order by the learned Judge JP Daffue in an application (under the same case number and delivered on 17 March 2023) for contempt of court brought by the LPC against Mr Mokhele, who had continued to practise as an attorney despite the order granted by us.

8.1 The Honourable Judge Daffue, in finding Mr Mokhele guilty of being in contempt of the order, comprehensively dealt with the question on the nature of the order and concluded it to be an interim order. I find it apposite to quote the following paragraphs from the judgment:

“[21] It is common cause that the respondent decided to carry on practising as an attorney notwithstanding his suspension. Over and above what was stated earlier herein, the respondent made his stance quite clear in the answering affidavit. He stated that ‘he only started operating only after the institution of the application for leave to appeal and up until same has been set aside by a competent court, it remains the respondent’s stance that, he will continue operating normally as the order suspending him from practice has been suspended by the institution of the application for leave to appeal.’[2] The first three requirements for contempt of court have been established beyond reasonable doubt.

[22] The position under s 16 of the Superior Courts Act pertaining to appeals is in accordance with the general rule laid down in *Zweni v Minister of Law and Order of the Republic of South Africa*. [3] The three attributes of a ‘judgment or order’ subject to an appeal are the following:

- a. it must be final in effect and not susceptible of alteration by the court of first instance;
- b. it must be definitive of the rights of the parties, it must grant definite and distinct relief; and
- c. it must have the effect of disposing of at least a substantial portion of the relief claimed in the main proceedings.

It is accepted that an interlocutory order with a final and definitive effect on the main application is a ‘judgment or order’ which is appealable. The real question is whether it can be altered and/or corrected on the return date or whether it can only be attacked on appeal. Having said this, there is scope for a finding that an interim interdict is appealable on the basis that it has the effect of a final judgment.[4] This is not such a case.

[23] Although the return date of the rule nisi in casu has been set to be 20 April 2023, and thus about five months after the suspension order was granted, I have no doubt that the order of 23 November 2022 does not have the effect of a final judgment although the respondent is temporarily prevented from practising as an attorney. He and his company are called upon

to show cause on the return date of 20 April 2023, a month from now why the interim orders should not be made final. Contrary to his version such orders are susceptible to alteration by the court of first instance. If the respondent really believed that he was entitled to practise in the meantime, he could have applied for relief to obtain his books and files confiscated by the applicant, to unfreeze his trust bank account with Standard Bank and to direct the applicant to allow him to apply for a Fidelity Fund Certificate. He failed to take any of the steps in this regard.

- [9] In *City of Tswane v Afriforum and Another*[5] the Constitutional Court reaffirmed the principle that interim orders may be appealable where the interest of justice would be served by the granting of leave. In this application we have not been so convinced. In fact, allowing an appeal where there is a return date would result in the undesirable effect of a piecemeal determination of the matter.[6] Moreover, Mr Mokhele did not make out a case of any irreparable harm that would be suffered if the leave to appeal is not granted (bearing in mind that it is not a final order).
- [10] We are therefore of the view that the order is not appealable and the application stands to be dismissed on that score alone.
- [11] Having found the order to be not appealable the question as to the chances of success on the merit do not really come to the fore. Notwithstanding this, we in any event are satisfied that another court would not come to a different finding on the merits. We have carefully considered the grounds for the proposed appeal as well as the merits on the papers as it stood at the time of the order. The main concern of the LPC, having received complaints and having compiled a report in terms of Section 43 through an investigation by the Investigation Committee, concluded misappropriation of money in the Trust Fund account of the firm for which Mr Mokhele furnished no acceptable explanations. It should be borne in mind that there is, in applications like these, a duty upon a legal practitioner to disclose and fully explain to court *prima facie* discrepancies in a trust account. It is insufficient to merely attempt to deny allegations. After all it is Mr Mokhele who has the intrinsic knowledge in respect of the account and who can easily remove any concerns that the LPC or/and court might have. This the Mr Mokhele has not done so far and is something that he yet might still attempt before or on the return date. We are of the considered view that another court will not come to a different finding.
- [12] For the above reasons we conclude that the order is not appealable but even if it was, it would carry no prospect of success.
- [13] It follows therefore that the application for leave to appeal must fail.
- [14] It is trite that costs follow the event. I have no reason to deviate from the rule.

ORDER:

- [15] The following order is made:

The application for leave to appeal is refused with costs.

AS BOONZAAIER

I agree.

C REINDERS

Appearance for the applicant in the main application

(the respondent in the application

for leave to appeal): M.S.

Adv. Mazibuko

Instructed by: Amade

& Company Incorporated

BLOEMFONTEIN

Appearance for the respondents in the

main application (the applicants in the

application for leave to appeal): Mr

LM Mokhele (in person)

[1] 2012 SACR567(SCA) at para [7]

[2] Answering affidavit para 68, p 132.

[3] 1993

(1) SA 523 (A) at 532 i – 533 b; see also SA v JHA 2022 (3) SA 149 (SCA) para 23 and numerous other judgments since Zweni.

[4] Mathale v Linda and another 2016 (2) SA 461 (CC) paras 25 – 30, which case is clearly distinguishable bearing in mind that the eviction order was found to have an immediate and devastating effect upon a homeless person.

[5] 2016 (6) SA 279 (CC) at para 41.

[6] City of Cape Town v South African Human Rights Commission

[2021] ZASCA 182 at para 11.

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Prepared on 10 October 2026 · Esheria