
SOUTH AFRICA / JUDGMENT

Montshiwa v Ditire and Others (UM 39/2018) [2018] ZANWHC 37 (22 March 2018) [2018] ZANWHC 37

COURT

North West High Court, Mafikeng

BEFORE

A M Kgoele

CASE / FILE NUMBER

UM39/2018

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IN THE HIGH COURT OF SOUTH AFRICA

NORTH WEST HIGH COURT, MAFIKENG

CASE NO: UM39/2018

In the matter between

GAONE JACK SIAMISANG MONTSHIWA

Applicant

AND

LERATO PERPETUA DITIRE

1st Respondent

MOETSI MAREDI INC. ATTORNEYS

2nd Respondent

MAINTENANCE OFFICER

3rd Respondent

KGOELE J

DATE OF HEARING

: 22 MARCH 2018

DATE OF JUDGMENT

: 22 MARCH 2018

DATE REASONS REQUESTED : 31 AUGUST 2018

DATE REASONS HANDED DOWN : 14 SEPTEMBER 2018

FOR THE APPLICANT

: In Person

FOR THE RESPONDENT

: No Appearance

REASONS

FOR JUDGMENT

[1] The applicant, Mr Jack Montshiwa, who appeared in person during the hearing of the matter, applied to this Court on an urgent basis for the following prayers:-

“1. That this application be heard on an urgent basis and that the failure to comply with ordinary manners of services and time frames provided in the uniform Rules of Court be condoned in accordance with Rule 6(12)(a);

2. That the second respondent be interdicted and restrained from paying the first respondent the money intended for a minor child maintenance while the applicant is still financing his last year / final study of LLB degree from a salary paid by the second respondent;
3. The Rule Nisi be issued calling upon any interested respondent above who wishes to oppose this application to appear and show cause, if any, to this Court on 26th April 2018 at 10h00 or soon thereafter as the matter may be heard that why the Rule Nisi issued should not be made final;
4. Directing any party opposing this application to pay punitive disbursement costs;
5. Granting further and/or alternative relief.”

[2] The application was heard on 22 March 2018 after he insisted that he will represent himself. The application was not opposed. His application was dismissed in Court and an ex-tempore reasoned judgment was delivered on the same day. There was no order as to costs which was made. He applied to this Court for reasons on the 20 July 2018, but the letter was brought to my attention on the 31 August 2018. I caused the Registrar to write a memorandum explaining the delay. The memorandum has been duly filed and the written reasons follows hereunder.

- [3] A brief summary of the background facts as gathered from the papers, despite being clumsily prepared, are that the applicant, Montshiwa, and the first respondent, Ditire, have a minor child together whose maintenance is the cause of this application. It appears that the first respondent, Ditire, approached the Mahikeng Maintenance Court whereupon the Maintenance Court made an order against him (Montshiwa) to pay an amount of R620-00 per month on the 4 September
2017. Aggrieved by this order, he filed a notice of Appeal against the whole of the judgment of the Maintenance Court as per Magistrate Motswenyane on the 27 September 2017 in this Court. I interpose to state that the notice of appeal filed of record reveals that the mother of the child is the only party cited therein as the respondent although the Appeal is directed against the order of the Maintenance Court or the Magistrate in question.
- [4] The applicant did not pay anything and a notice in terms of Section 29 of the Maintenance Act No. 99 of 1998 (The Maintenance Act) was served on Moetsi Maredi Inc. Attorneys, who has been cited as the second respondent in this matter and who according to the applicant, is his employer. Attached to the notice is an emoluments attachment order in terms of Section 28 of the Maintenance Act, directing his employer to deduct an amount of R620-00 per month, including an amount of R310-00 per month to cover the arrears amount allegedly owed by the applicant. This order further directed the employer to pay all the moneys to the first respondent. According to the applicant these two documents were shown to him by his employer, and are the main cause of this application.
- [5] The first hurdle the applicant was faced with in his application was to demonstrate in both his papers and submissions in Court that this matter is urgent. The applicant was facing an insurmountable mountain to climb on this issue because:-
- The papers are silent as to when this two documents were brought to his attention;
 - He only indicated from the submissions in Court that he received them on 1 March 2018, with no paper trail to support this. He pointed out a handwritten inscription on the notice served on his employer which was couched “received on 1/3/2018” but with no signature and/or indication as to who wrote it. The date stamp of the maintenance officer on the notice is dated 10 November 2017, which compounds this issue further;
 - The notice of motion was signed on 6 March 2018 and filed with the Registrar of this Court on the same day. The date of hearing in the matter as chosen by the applicant was indicated in the notice of motion as the 22 March 2016. It suffices to say that two motion Court dates, the 8 March and 15 March were overlooked and a third one, the 22nd was chosen by the applicant since the date when the Notice of Motion were signed. This scenario alone, does not support the averments that the matter is urgent nor semi urgent. Importantly, no explanation or reasons were given in the papers which

renders the matter urgent, and above all, why when it was prepared, a period of three weeks was allocated to be heard. The urgency appears to be self-created.

- [6] Rule 12(b) of the Uniform Rules of Court (the Rules) is clear and requires an applicant to set forth in his affidavit explicitly the circumstances which he avers renders the matter urgent.
- [7] There is another difficulty facing the applicant as far as urgency is concerned. In terms of Rule 12(b) of the Rules, in addition to the applicant setting forth explicitly in the affidavit the circumstances which he avers renders the matter urgent, he must also set out the reasons why he claims that he could not be afforded substantial redress at a hearing in due course. On this leg, the applicant fails dismally because not only did he not attempt to deal with this leg of urgency both in his papers and during the submissions, but a careful reading of Section 28 of the Maintenance Court Act 99 of 1998, Sub-section 2(a) thereof, reveals that he has a recourse to follow if he is aggrieved by the attached two documents which was purportedly served on his employer.
- [8] Section 28(2)(a) provides that:-

“An order under this section may at any time, on good cause shown, be suspended, amended or rescinded by the Maintenance Court”.

A further reading of the section reveals that he can approach the Maintenance Court again to make an application to rescind, suspend or amend the attachment of emolument order. In addition, as already indicated above, the applicant had filed a notice to appeal the initial order of the Maintenance Court. This is another form of the recourses available to him which he already attempted to embark on. I do not see any reason why the applicant has not pursued this application for a period of more than four months. As indicated earlier, the notice of Appeal did not cite the Magistrate who granted the Order as a party to the proceedings. In my view, this might have been the reason why the second order / emolument attachment order was made, despite his notice of appeal being filed with this Court. It is therefore clear that the applicant failed to satisfy both legs as far as urgency is concerned and I am therefore unable to find that he succeeded in demonstrating that the matter is urgent.

- [9] Regarding the merits, the applicant applied for an interdict to restrain the second respondent from paying the first respondent the money intended for the minor child's maintenance while he is still financing his last year / final study of his LLB degree from a salary paid by the second respondent. Besides the application being clumsily prepared, as I have already indicated above, the application is full of irrelevant averments for this type of application. The applicant concentrated much on the relationship between the two parties and his inability to pay in his founding affidavit. The necessary averments that need to be mentioned dealing with the requirements for granting an interdict are conspicuously absent in the papers. The applicant conceded during the submissions in Court, that his papers do not at all deal with the requirements that are to be met before an interdict, let alone a temporary one, can be granted.

[10] Even if one could have scratched through his papers to find some requirements, this exercise could not have salvaged the difficulties the applicant was facing because, as already indicated when dealing with urgency, the applicant has an alternative remedy or can be afforded a substantial redress in terms of Section 28 of the Maintenance Act. For this reason alone, and apart from all the other reasons that I alluded to in paragraph 9, he could not have succeeded with the merits of this matter even if he could have properly dealt with them in his papers.

[11] The above sums up the reasons why the application was dismissed.

A M KGOELE

ACTING DEPUTY JUDGE PRESIDENT OF THE HIGH COURT

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Prepared on 14 October 2026 · Esheria