

SOUTH AFRICA / JUDGMENT

Mphalala v South African Security Agency (684/2011) [2014] ZAECMHC 27 (5 June 2014)

[2014] ZAECMHC 27

COURT

Eastern Cape High Court, Mthatha

BEFORE

L.P Pakade

CASE / FILE NUMBER

684/2011

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IN THE HIGH COURT OF
SOUTH AFRICA
(EASTERN CAPE LOCAL
DIVISION, MTHATHA)
CASE
NO: 684/2011
In

the matter between:

NOMVU
MPHALALA
Applicant
And
SOUTH
AFRICAN SOCIAL SECURITY
AGENCY Respondent

JUDGMENT

PAKADE ADJP:

[1] In this application, the applicant is vindicating a right to social security in terms of s 27 of the Constitution of the Republic of South Africa, Act 108 of 1996. The relevant part of the section, s 27(1)(c) provides that :

“Everyone has the right to have access to - social security, including, if they are unable to support themselves and their dependents, appropriate social assistance”

- [2] The State is enjoined to take reasonable legislative and other measures within its available resources to achieve the progressive

realisation of the rights enshrined in s 27(1)(c)[1]. In compliance with this constitutional principle, the State enacted Social Assistance Act, 13 of 2004 and regulations were issued in terms thereof to regulate the grant and payment thereof to deserving qualifying persons.

- [3] The purpose of the Social Assistance Act (the Act) is to enhance effective provision of social assistance by providing norms and standards, standardised delivery mechanisms and a national policy for the efficient, economic and effective use of the limited resources available for social assistance and for the promotion of equal access to government services[2].
- [4] The courts have had occasion to interpret s 27(1)(c) in line with the Constitution[3] and have observed that the socio-economic rights are closely related to the founding values of human dignity, equality and freedom[4].
- [5] The applicant seeks an order declaring the unilateral termination of a disability grant which she started to enjoy in October 2008 unlawful, reinstatement thereof and arrear payment. She sought this relief in a long form application which she launched in this Court on 22 March 2011. The application was opposed and the necessary opposing affidavit was filed and replied to.
- [6] The facts in support of the application, as gleaned from the founding affidavit crystallise as follows. The applicant applied for disability grant in the respondent's Ngqeleni office in 2008 and, together with the application, she submitted medical reports

supporting her medical condition. The respondent's office in Ngqeleni recommended the application for approval by the respondent

and the applicant started receiving the grant in October 2008. She was not informed that the grant was temporal and had reasonably

believed that it was permanent. In July 2009 she attended the pay station in order to collect her grant but only to be informed

that it had been terminated. The respondent's Ngqeleni office did not furnish her with reasons for terminating her grant save only to inform her to reapply. This is her cause of action.

- [7] A different version emerged from the answering affidavit. That version is that the applicant's application was approved for a period of 12 months because the applicant needed to be assisted while taking medication over a period of 12 months and was so informed by letter dated 25 August 2008. The letter, marked exhibit SY2 in the answering affidavit, indeed supports the contention of the respondent that the grant was temporal and would endure for a period of 12 months and thereafter lapse automatically. Absent this stipulation at the time of approval the termination would require a termination letter prior to termination informing her about intended termination and reasons therefor.

[8] In her replying affidavit, the applicant introduced a different version from her original version that the grant was permanent but now accepting that the grant was approved for 13 months. This surely would not make it a permanent grant. The intention of the respondent seemed to have been clear from the time of approval that the applicant needed to be observed for a specific period meanwhile she would be getting the grant. It shows to me that the respondent was not satisfied that the applicant qualified for a permanent grant at the stage of the application. She needed to be exposed to medication and thereafter her application be reviewed.

[9] The applicant's Attorneys of record were furnished with the letter of approval of the grant before launching the present

application. As already stated above, that letter informed the applicant that she was approved to receive a grant for a specific

period upon the expiry of which the grant would automatically terminate. In my view, even if the applicant had not been aware

of the letter before approaching her Attorneys, she became aware together with her Attorneys upon being furnished with the letter that the grant expired by effluxion of time and should not have launched the application.

[10] The applicant cannot succeed therefor.

[11] Ordinarily, costs would have to follow the successful party. This is trite law. But the applicant was vindicating her constitutional right to social security. But her Attorney should have been vigilant and not embark on litigation even when so obvious that there is no longer *litis contestatio* between the parties. Costs have unnecessarily been incurred and I do not understand the principle of costs in constitutional litigation to be meaning that even if a party deliberately embarked in a patently fruitless litigation, it should not be ordered to pay costs

occasioned by such litigation. This is not a hard and fast rule in the law of costs otherwise it would be open to abuse of the due process of the law. Having said this, I think the interests of justice justify an order that each party pays its own costs.

ORDER

1. The application is dismissed;
2. Each party shall pay its own costs.

L.P Pakade

ACTING DEPUTY JUDGE PRESIDENT

For the Applicant : Mr Zono

Instructed by : A.S Zono & Associates

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Mthatha

For the Respondent : Adv Hobbs

Instructed by : Potelwa & Co

43 Wesley Street

Heard on

: 10 May 2013

Delivered on : 5 June 2014

[1] S2 of the Constitution of RSA

[2] Preamble to the Social Assistance Act 13 of 2004

[3] Ngalo v The South African Social Security Agency [2013] 2 ALLSA 347 (ECM)

[4] Section 1 of the Constitution referred to by Justice Mokgoro in Khoza & Others v Minister of Social Development & Others

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