

SOUTH AFRICA / JUDGMENT

Ncongwane v Teixeira and Others (2024/056876) [2025] ZAGPJHC 712 (10 March 2025) [2025] ZAGPJHC 712

COURT

South Gauteng High Court, Johannesburg

BEFORE

WJ du Plessis

CASE / FILE NUMBER

2024/056876

Source: saflii.org · Research copy typeset by Esheria. Not court-issued or certified.

Source record

THE

HIGH COURT OF SOUTH AFRICA

GAUTENG

DIVISION, JOHANNESBURG

Case

no: 2024/056876

(1)

REPORTABLE: No

(2)

OF INTEREST TO OTHER JUDGES: No

(3)

REVISED: Yes

10

March 2025

In

the matter between:

OUPA
JEREMIAH NCONGWANE
Applicant
and
THE
MAGISTRATE MR TEIXEIRA,
First Respondent
MEYERTON
MAGISTRATE COURT
LAZARUS
NGCONWANE
Second Respondent
MEYERTON
DEPUTY SHERIFF
Third Respondent
LAUTENBACH
ATTORNEYS
Fourth Respondent

JUDGMENT

DU PLESSIS J

Introduction

- [1] The second and fourth respondents set this matter down on the unopposed motion court roll. Their stated intention in doing so was to finalise the matter, as the applicant had not properly enrolled it on the opposed motion court roll.
- [2] The application originated as an urgent application seeking to interdict Magistrate Mr Teixeira from executing a court order pending a decision by this Court on the urgent application. The applicant purported to be represented by Mr Michael Mahlomola Motaung under section 38 of the Constitution. However, it appears that Mr Motaung does not have the right of appearance in the High Court in terms of section 33 of the Legal Practice Act[1] (read with s 25(3)).
- [3] The applicant then issued a second notice of motion to join the other respondents. This notice of motion was defective in that it failed to specify a clear date, referring instead to "30th day of 2024", and it set an adjudication date of 3 June 2024 despite only being served on 4 June 2024. The second and fourth respondents filed a notice of intention to oppose in response to this notice of motion. There was very little movement thereafter. The second and fourth respondents filed heads of argument in September 2024, and a practice note in November 2024. The matter was not placed on the opposed motion court roll for a hearing.

- [4] The applicant stated that he obtained a date on the opposed motion court roll for 28 July 2025. However, he has not set the matter down for that date. There is no notice of set down filed. There is no practice note from the applicant. There is no heads of argument from the applicant. The application is not properly indexed and paginated. Making sense of the file on CaseLines is challenging, with certain documents only available online in court. In short, the application on CaseLines is incomplete, and from the record, it is not evident that the matter is correctly enrolled on the opposed motion court roll.
- [5] The second and fourth respondents question how the applicant obtained a date on the opposed motion court roll without complying with the Rules of Court and the applicable Practice Directives. They contend that the applicant's actions amount to an abuse of court process, designed to frustrate and delay the second respondent's ability to execute the Magistrates' Court order. They need clarity and finality in the matter, and in the absence of the applicant's compliance with the Practice Directive, they treated the matter as unopposed and placed it on the unopposed motion court roll, which is how it came before me.
- [6] The applicant then filed an application in terms of Rule 60A to set aside what he considered an irregular step a few days before the hearing (presumably rather Rule 30). The second and fourth respondents opposed this application.
- [7] Mr Marais, appearing for the second and fourth respondents, submitted that the matter should be struck from the roll and should only be re-enrolled once the applicant has complied with the Rules of Court and the Practice Manual in the absence of the matter being dismissed.
- [8] I could not allow Mr Motaung to address the court on the issues on behalf of the applicant, as he failed to establish that he has the right of appearance in the High Court in terms of the Legal Practice Act, and should he present the applicant without having a right to do so, the proceedings can be considered irregular.[2]
- [9] I allowed the applicant to address the court. The applicant inquired about what he needs to do for the court to hear the matter on an opposed basis, re-iterating that he is the applicant. I informed the applicant that if he has indeed secured a date on the opposed motion court roll, he must serve a notice of set down for the application should he wish to continue the matter in the High Court.
- [10] The proper procedure is set out in paragraph 9.8.2 of the Practice Manual. Typically, a date is allocated only once the following procedural requirements have been met: the application papers have been properly secured, indexed, and paginated; heads of argument have been filed; and each party has delivered a practice note. If the applicant fails to comply with these procedural requirements, the respondent is entitled to take the necessary steps to ensure proper enrolment of the matter on the opposed motion roll for a hearing.

[11] Without those steps, the matter stands to be struck off from the roll for non-compliance with the rules and the practice manual. Since the applicant failed to take the necessary steps to properly enrol the matter to proceed with the matter and have it finalised, they will be held liable for the costs.

Order

[12] The following order is made:

1. The application is struck from the roll.
2. The applicant is directed to comply with the Uniform Rules of the Court and the Practice Manual should he seek to re-enrol the matter.
3. The applicant is to pay the costs on a party and party scale.

WJ du Plessis

Judge of the High Court

Gauteng Division, Johannesburg

Date of hearing: 10 March 2025 Date of judgment: 11 March 2025 For the applicant: AS Marais instructed by I Lautenbach Attorneys For the respondent: In person.

[1] 28 of 2014.

[2] Mdluli v Minister of Justice and Correctional Services [2024] ZAGPJHC 1529.

Source & reproduction note

Judgment wording, source notices and original paragraph numbers are retained. Esheria supplies the layout and this PDF's page numbers; these are not the source pagination. This is a research copy, not an official or certified court document. Check quotations, citations and publication restrictions against the original source before relying on it.

ORIGINAL SOURCE <https://www.saflii.org/za/cases/ZAGPJHC/2025/712.html>

CASE PAGE <https://chat.esheria.ai/case-law/south-africa/ncongwane-v-teixeira-and-others-unknown-topic-agpjhc-2025>

Prepared on 11 October 2026 · Esheria