

SOUTH AFRICA / JUDGMENT

Ndabeni and Others v Premier Kagiso Mokgosi and Others (Reasons) (6058/2024) [2024] ZANWHC 292 (3 December 2024) [2024] ZANWHC 292

COURT

North West High Court, Mafikeng

BEFORE

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CASE / FILE NUMBER

6058/2024

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IN THE HIGH COURT
OF SOUTH AFRICA
NORTH WEST
DIVISION, MAHIKENG
CASE NO.: 6058 /2024
Reportable: YES/NO

Circulate to Judges:

YES/NO
Circulate to
Magistrates: YES/NO
Circulate to Regional
Magistrates: YES/NO

In the matter between:

VUYISILE
CHARLES NDABENI
1st
APPLICANT
GLOBAL
TOURISM LEGACY NETWORKS (PTY) LTD
2nd
APPLICANT
MOTSWANA
RE NA LE RONA NPC
3rd
APPLICANT
And
PREMIER
KAGISO MOKGOSI
1st

RESPONDENT
NORTH
WEST EXECUTIVE COUNCIL
2nd
RESPONDENT
MEC
BITSA LENKOPANE
3rd
RESPONDENT
MEC
KENETSWA MOSENOGI
4th
RESPONDENT
SPEAKER
DESBO
MOHONO
5th
RESPONDENT
NORTH
WEST PARKS AND TOURISM BOARD
6th
RESPONDENT
REASONS
FOR ORDER DATED 28 NOVEMBER 2024

INTRODUCTION:

[1]
The applicants in this matter, Vuyisile Charles Ndabeni (the first applicant), Global Tourism Legacy (the second applicant) and Motswana Re Na Le Rona NPC (the third applicant) launched an urgent application which was heard on 22 November 2024.

[2]
At the hearing of the matter, the first applicant appeared in person. The first applicant, (Mr. Ndabeni), informed the Court that he was appearing on behalf of the second and third applicants. Ms. Ndluli appeared for the respondents.

5.
After hearing arguments from both Mr. Ndabeni and Ms. Ndluli, the Court reserved judgment and on 28 November 2024 handed down an

order in the following
terms:

(i)

The application is dismissed;

(ii)

The first applicant is ordered to pay the costs of
the application on a party and party scale, Scale “B”.

[6]

What follows hereinunder are the reasons for the court order dated 28
November 2024.

THE LAW

[7]

Every application must be brought on notice of motion supported by an
affidavit as

to the facts upon which the applicant relies for relief.

(See: Rule 6(1) of the Uniform Rules of the Court).

[8]

An affidavit is a statement in writing sworn to before someone who
has authority to

administer an oath. It is a solemn assurance of fact

known to the person who states it, and sworn to as his statement

before some

person in authority such as a commissioner of oaths.

[9]

Regulation 4(1) of the Regulations Governing the Administration of an
Oath or Affirmation

reads as follows: “Below the deponent’s

signature or mark the commissioner of oaths shall certify that the

deponent has acknowledged that he

knows and understands the contents

of the declaration and he shall state the manner, place and date of
taking the declaration.”

[10]

Regulation 4(2) of the Regulations Governing the Administration of an
Oath or Affirmation reads

as follows: “The commissioner of

oaths shall – (a) sign the declaration and print his full name

and business address below his signature;

and (b) state his

designation and the area for which he holds his appointment or office
held by him if he holds his appointment

ex officio.”

[11]

In affidavits filed which are filed in support of the notice of
motion. It is well established

that the applicant should make out his

or her case in the founding affidavit and certainly not belatedly in

argument. (See: My Vote Counts NPC v Speaker of the National
Assembly 2016 (1) SA 132 (CC) at paragraph 177).

[12]

The founding affidavit must at the least contain the following:

(a)
applicant's right to apply, that is the applicant's locus standi.
Appropriate allegations to establish the locus standi of an applicant should be made in the founding affidavit. The applicant must satisfy the court that he or she has a direct interest in the relief sought, the interest must not be too remote, the interest must be actual, not abstract or academic and it must be current interest and not a hypothetical one.

The duty to allege and prove locus standi rests on the party instituting the proceedings. (See: Four Wheel Drive CC v Leshni Rattan NO (1048/17) [2018ZASCA 124 (26 September 2018) at paragraph 7).

(b)
In addition, the founding affidavit should contain facts indicating that the court has jurisdiction.

(c)
The cause of action on which the applicant relies.
(See: National Council of Societies for the Prevention of Cruelty to Animals v Openshaw [2008] ZASCA 78; 2008 (5) SA 339 (SCA) at 349A – B)

(d)
The evidence in support of the application. In application proceedings, the affidavits take the place of not only the pleadings in an action, but also the essential evidence which is to be led at a trial. (See: National Credit Regulator v Lewis Stores (Pty) Ltd 2020 (2) SA 390 (SCA) at paragraph 29).

[13]
A company cannot conduct a case in court except by the appearance of counsel acting on its behalf
(See: Manong v Minister of Public Works (518/2008) [2009] ZASCA 110 (23 September 2009) at paragraph 4).

[14]
In Ganes v Telecom Namibia Ltd 2004 (3) SA 615 (SCA) at 624G – H, the court held that a deponent to an affidavit need not be authorized to depose to the affidavit in support of the application.

It is the institution of the proceedings and prosecution thereof that must be authorized.

[15]
In proceedings, where the applicant is an artificial person, evidence is required that the applicant has duly resolved to institute the proceedings, and the proceedings are instituted at its instance.
(See: Tattersall and Another v Nedcor Bank Ltd. (340/93)

[1995] ZASCA 30; 1995 (3) SA 222 (AD); [1995] 2 All SA 365 (A) (28 March 1995) at paragraph 10)
THE HEARING OF THE
MATTER

[16]

When this matter was heard, the Court indicated to Mr. Ndabeni, that there was a document filed which purports to be a resolution of Global Tourism Legacy Network and Motswana Re Na Le Rona NPC. The Court pointed out that the resolution was only signed by Mr. Ndabeni and not by the other representatives of the second and third applicants.

[17]

Mr. Ndabeni in response informed the Court that the second and third applicants work together and that is why he was the only person who signed the resolution on behalf of the second and third applicants.

[18]

The Court then asked Mr. Ndabeni if he was an attorney or an advocate. Mr. Ndabeni informed the Court that he was neither an attorney or an advocate. Mr. Ndabeni was then referred to the document written "FOUNDING AFFIDAVIT".

The Court referred

Mr. Ndabeni to the third page of the document. The Court pointed out to Mr. Ndabeni that although the police official K.R Shuenyane who is identified as a commissioner of oaths signed the document under the signature of Mr. Ndabeni. The police official failed to attach a certificate below Mr. Ndabeni's signature certifying that Mr. Ndabeni had acknowledged that he knows and understands the contents of the declaration and he further failed to state the manner, place and date of taking the declaration. Mr. Ndabeni informed the Court that he did not know that was a requirement and had no comment.

[19]

Mr. Ndabeni was informed by the Court that the Court had read the document marked "FOUNDING AFFIDAVIT" and Mr. Ndabeni was asked if he wished to make any further submissions or if he stood by what is contained in the document marked "FOUNDING AFFIDAVIT".

Mr. Ndabeni informed the Court that the matter had sat before Djaje DJP on

15 November 2024 when it was removed from the roll and Mr. Ndabeni applied for the same matter to be placed on the roll under a different case number on 22 November 2024.

[20]

Mr. Ndabeni then proceeded to address the Court on the ills of the North West Province. The issues that were raised in oral submissions by Mr. Ndabeni were not raised in the document marked “FOUNDING AFFIDAVIT”.

[21]

The Court considered the contents of the document marked “FOUNDING AFFIDAVIT”. The

Court noted that Mr. Ndabeni made an allegation that he was duly authorized to bring the application on behalf of the second and third applicant.

[22]

Mr. Ndabeni averred that on 15 October 2024, he had sent a letter of demand on behalf of the second and third applicant to the first respondent, Premier Kagiso Mokgosi. The letter requested specific information with regards to the lack of vision, leadership and execution within the North West Parks and Tourism Board, the D – Account and a full disclosure report on the disposal of strategic assets of the Bophuthatswana sovereign state.

[23]

The Court noted that Mr. Ndabeni averred that the response of the first respondent was dismissive and disrespectful, demonstrating a contemptuous attitude.

[24]

The Court noted from the reading of the document marked “FOUNDING AFFIDAVIT” that the applicants sought the requested information to ascertain the state of governance and leadership in the North West Province.

The Court noted in conclusion, the applicants sought the Court to compel the respondents to provide the requested documents by the close of business on 21 November 2024 and address the inappropriate conduct exhibited by the first respondent. The Court further

noted that the applicants sought the interdicting of convening of the Special Executive meeting on 24 November 2024.

[25]

The Court when examining the notice of motion noted the notice of motion sought relief in the following terms, “AN INTERDICT RESTRAINING THE FIRST RESPONDENT AND THE SECOND RESPONDENT FROM CONVENING THE SPECIAL EXECUTIVE COUNCIL MEETING ON 22ND NOVEMBER 2024 AND THE DATE OF THE EXECUTIVE COUNCIL MEETING ON 24TH NOVEMBER 2024”.

[26]

The respondents have opposed the application and Ms. Nduli for the respondents submitted to the Court that the matter lacked urgency. The deponent to the affidavit of the applicant failed to comply with the provisions of Rule 6(12) of the Uniform Rules. No case has been made out for the circumstances which render the matter urgent and why the applicants cannot receive substantial redress at a hearing in due course. Ms. Nduli submitted from the reading of the papers of the applicants, the applicants have been aware of the special executive council meeting as far back as 15 October 2024. No explanation is given for only waiting until 19 November 2024 to bring the application.

[27]

Ms. Nduli submitted that the documents sought date back to the past 30 years and they are not relevant to the special executive council meeting to be held on 22 November 2024.

[28]

Ms. Nduli further submitted that the first applicant failed to make out a case for locus standi to bring the application on behalf of the second and third applicants. The application is premature because the application was brought within 30 days afforded to the public body in terms of the Promotion of Access to Information Act, Act 2 of 2000 to reply to the request of the information by the first, second and third applicant. The relief sought is incompetent in that the relief sought, interdicting the sitting of a special executive council meeting is not related to the documents sought.

[29]

Ms. Nduli further submitted that the first, second and third applicants failed to make out a case that they have the necessary locus standi to bring the application for the relief that the first, second and third applicants seek.

[30]

Mr. Ndabeni in reply filed a document titled "HEADS OF ARGUMENTS". Attached to the document was another document which purported to be the replying affidavit of the first, second and third applicants to the answering affidavit of the respondents. This document was also not properly commissioned. It does not comply with Regulations 4(1) of the Regulations Governing the Administration of

an Oath or Affirmation.

[31]

The document titled “HEADS OF ARGUMENT” when addressing the issue of locus standi, the “deponent”, Mr. Ndabeni states the first applicant as an individual has consistently engaged and raised concerns regarding mismanagement of assets originally designated to protect the promotion to tourism in the North West Province.

[32]

The second applicant is an entity established to preserve, protect and promote the tourism legacy within the region, which is intricately linked to the disputed assets. The third applicant is a non – profit entity representing communities affected by the improper disposal of these assets.

[33]

In his oral submissions in reply, Mr. Ndabeni stated the North West Government failed dismally.

It is not about the meeting of 22

November 2024 and 23 November 2024. It is about the court having judicial oversight over the North West Provincial Government.

ANYLYSIS

[34]

Although Mr. Ndabeni informed the Court that he is representing the second and third applicant

and, in the document, marked “FOUNDING AFFIDAVIT” at paragraph 1, an averment is made that Mr. Ndabeni is duly authorized

to bring the application on behalf of the second and this applicants. The respondents have challenged this averment. The respondents

contend that the first applicant failed to annex a resolution taken by the members of the second and third applicants, authorizing

him to the application on their behalf. I agree with this submission. The purported filed resolution refers to three persons. Mr.

Ndabeni, Mr. Mokete Mochine a director of the second applicant and Kamau Dibakwane a representative of the third applicant. As I have indicated above, the resolution was only signed by Mr. Ndabeni. In the face of the challenge to the authority of Mr. Ndabeni to

institute the application on behalf of the second and third applicants, Mr. Ndabeni should have presented acceptable proof of authority that he was authorized to institute the application on behalf of the second and third applicants.

[35]

I am not satisfied that the second and third applicants authorized Mr. Ndabeni to bring the application on their behalf. Even if I am wrong, Mr. Ndabeni had indicated to the Court that he is not an attorney or an advocate. The authorities are clear on this issue, an artificial person cannot be represented in court proceedings by a person who is not an attorney or an advocate. I am consequently not satisfied that the second and third applicants were before the court on 22 November 2024 when this matter was heard.

[36]

The documents marked “FOUNDING AFFIDAVIT” and “HEADS OF ARGUMENT” were not properly commissioned. Mr. Ndabeni did not move an application for condonation of the noncompliance with Regulation 4(1) of the regulations governing the administration of an oath or affirmation. Accordingly, the application of the first applicant was not accompanied by an affidavit.

[37]

When the matter was heard, the Court viewed the papers of Mr. Ndabeni benevolently because Mr. Ndabeni is not a legal practitioner. There is however a limit within which the Court could look benevolently on the papers. The document marked “FOUNDING AFFIDAVIT” in addition to not being an affidavit, does not speak to the relief that is sought in the notice of motion. Mr. Ndabeni failed to make out a cause of action which the applicants rely for an order interdicting and restraining the first and second respondent from convening the special executive council meeting on 22 November 2024 and the executive meeting on 24 November 2024. There is no legal connection between the documents sought by the first, second and third applicant and interdicting of the executive meeting on 22 November 2024 and the executive meeting on 24 November 2024.

[38]

Mr. Ndabeni failed to make appropriate allegations to establish the locus standi of the applicants for the relief that they seek. The applicant must satisfy the court that he or she has a direct interest in the relief sought, the interest must not be too remote, the interest must be actual, not abstract or academic and it must be current interest and not a hypothetical one. Mr. Ndabeni failed in this regard. The purported replying affidavit was drafted in broad

terms.

It did not address the key issue, what are the interests of the applicants in the relief that they seek, especially the interdicting

of the special executive council meeting on 22 November 2024 and the executive meeting on 24 November 2024.

COSTS

[39]

Ms. Nduli submitted because of the conduct of the first applicant, an appropriate costs order

would be costs on a party and party scale,

Scale “C”.

[40]

The general rule is costs follow the cause, and I found no reason to depart from the rule. In

considering an appropriate costs order, the

Court considered that there was no urgency in the matter. The Court considered the

complexity of the matter. It cannot be said that the

matter was complex. No case was made out for the locus standi

of the applicants to bring the application and no case was made out

for the relief sought by the applicants. This was dispositive

of the

entire matter.

[41]

The matter is important to the respondents, but the Court was not convinced that this on its

own warranted costs on party and party

scale “C”.

[42]

The Court has already found that the second and the third applicants are not before the court.

It is only the first applicant who is

before the court and any cost order made would have to be against the first applicant.

ORDER:

[43]

Resultantly, the following order was made: -

T MASIKE

ACTING JUDGE OF THE

HIGH COURT

NORTH

WEST DIVISION, MAHIKENG

APPEARANCES

DATE FOR

HEARING

: 22

NOVEMBER 2024,

DATE OF

JUDGMENT

: 28 NOVEMBER 2024

DATE OF

REASONS

: 3 DECEMBER 2024

FOR 1st APPLICANT

: IN PERSON

INSTRUCTED BY

: IN PERSON

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FOR THE RESPONDENTS

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Prepared on 9 October 2026 · Esheria