

SOUTH AFRICA / JUDGMENT

Nkondo v Limpopo Provincial Legal Practice Council (2659/2020) [2024] ZALMPPHC 74 (12 July 2024) [2024] ZALMPPHC 74

COURT
Limpopo High Court, Polokwane

BEFORE
S Monene

CASE / FILE NUMBER
2659/2020

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REPUBLIC OF SOUTH AFRICA

IN THE HIGH COURT OF SOUTH AFRICA

(LIMPOPO DIVISION, POLOKWANE)

CASE NO:2659/2020

- (1) REPORTABLE: YES/NO
(2) OF INTEREST TO THE JUDGES: YES/NO
(3) REVISED

Signature:

Date: 2024/07/12

In the matter between:

NKONDO PHAMELA CLINTON

APPLICANT

And

LIMPOPO PROVINCIAL LEGAL PRACTICE COUNCIL RESPONDENT

REASONS FOR “JUDGMENT” IN TERMS OF UNIFORM RULE 49

MONENE AJ

[1] On 19 June 2024 this court sitting in the opposed motion special allocation roll removed this application from the roll for lack of ripeness for hearing and mulcted the applicant with costs on an attorney and client scale.

[2] On 1st July 2024 a request for reasons for “judgement” ostensibly from Letsela Nkondo Attorneys on behalf of the applicant,

Mr Nkondo was brought to my attention.

[3] The request called upon me to “within 15 days of its receipt hand to the “Register” of the court “a written judgement” in respect of the aforesaid decision to remove the matter from the roll and therein show “the facts found to be proved”, the grounds relied upon to arrive “at the punitive scale Costs Order” and my “reasons for judgement”.

[4] I do not understand a removal or striking off a matter from the roll to be a “judgement” in the sense of having a finality which may invite a request for reasons pursuant to an appeal and on that score find the request for reasons for “judgement” to be a curiosity. The reasons for the removal of the application were expressed by this court explicitly in court and ought to be clear from the transcribed record. I have also been made aware that in the intervening period while these reasons were still pending, the applicant has filed or sought to file a “Notice of Appeal” in this matter with this court’s clerk, that is, in circumstances where curiously no application for leave to appeal has yet been brought before this court. A notice of appeal even if it was not prematurely issued would not come to this court but would have had to serve before a court of higher standing to me, to wit, a Full Court of this Division or the Supreme Court of Appeal in exceptional circumstances

[5] Be that as it may, I have decided to indulge the applicant and briefly explain why the application was struck off the roll with a punitive costs order. After all the cost order perhaps cries out to be explained again notwithstanding that apparently a “Notice of Appeal” has already been issued and maybe, the law being broad and all of us being subject to acquiring new strands of knowledge every day, the matter is already being prosecuted at appeal by the applicant somewhere sans leave to appeal being entertained by this court.

THE FACTS IN BRIEF

[6] This application came before me as a very late addition to my special allocation motions on the morning of 18 June 2024.

[7] Having not had time to go through the file, I decided to, prior commencing with original special allocation roll, determine from the parties counsel what the triable issues were so as to allocate a time to hear the matter.

- [8] Counsel for the respondents, Mr Vilakazi, pointed out that the matter was not ripe for hearing as the applicant had only six days earlier on 12 June 2024 served the respondent with a notice to stand by his papers and not amend same post receipt of the review record in terms of Uniform Rule 53. His contention was that six days after receiving that notice the respondent was still within the requisite dies to file an answering affidavit to the applicant's founding papers.
- [9] The response of the applicant's counsel, Mr Mohoto, was that the respondents had "said nothing" in their submission on ripeness and that he wished to proceed and get the orders the applicant prayed for on an unopposed basis.
- [10] It was perplexing to this court as to how this matter could have been allotted a special allocation date while it was yet unopposed. I then decided to stand down the matter until the following day being 19 June 2024 to afford me an opportunity to first deal with the original roll and to go through the file in preparation for the following day.
- [11] Upon subsequent perusal of the file I discovered the following:
- 11.1 There was a 2020 pending initial application brought by the respondent, the Limpopo chapter of the LPC under the same case number which in Part A sought to have the applicant in casu temporarily suspended from practicing as an attorney pending the final determination of Part B in which the main prayer was a final suspension for ten years. The full set of affidavits in that matter have been filed.
- 11.2 There was further application by the LPC in which it sought leave to file a supplementary affidavit in terms Uniform Rule 6(5)(e).
- 11.3. Then there was the current application by the applicant under the same case number where he, in the main, seeks to review and set aside the appointment of the investigator who investigated his matter as a run up to and after the decision of the respondent to bring a suspension application as well as all the steps taken by the respondent to charge him.
- 11.4 It was true that the applicant had only on 12 June 2024 served the respondent with a notice in terms of rule 53 to the effect that he would not be amending nor supplementing his papers.
- 11.5 The matter had previously on 19 February 2024 been removed from the roll for want of ripeness apparently per two judges, Naude-Odendaal J and Mathabathe A J.
- 11.6 I could not find the actual request for a preferential hearing date/special allocation in the file and made a mental note to source it from the parties when the matter appeared the following day.
- 11.7 The notice of set down filed and served by the applicant only pertained to this application and referred not to the other applications brought by the LPC.

ANALYSIS AND REASONING IN BRIEF

[12] On being provided with the request for special allocation by the applicant's counsel when the matter re-appeared I deciphered the following therefrom:

12.1 The request to the Judge President had been made by the applicant's attorneys, Letsela Nkondo Associates Inc on behalf of the applicant as "respondent" in the 2020 application brought by the LPC against him.

12.2 According to the request letter Part A of the LPC application had already been determined and the applicant (respondent therein) had already been temporarily suspended.

12.3 The applicant had told the Judge President in the request letter that the allocation was for all the pending applications which were to be heard" in a single sitting for purposes of expedience" and finality.

12.4 The applicant had anticipated because all the applications, that is, the LPC's main Part B application, the LPC's rule 6(5) (e) application and his application would run for a duration of 3 to 5 court days.

[13] I brought all these to the attention of counsel for the applicant who however insisted that he wanted to be heard only on this as yet unripe application. The respondent, this time represented by Mr Raselebana, persisted that the application was not ripe for hearing as they were legally still within the dies to file their answering affidavit.

[14] It was clear to this court that the special allocation had been granted by the Judge President not for the hearing of a just one of the applications more so one which was clearly not yet ripe for hearing. The applicant did not and could not deny that following their rule 53 notice served on 12 June 2024 the respondent still had time to file its answering affidavit. Despite all this the applicant's counsel persisted in his quest to be heard only on this application on an unopposed basis, making light of the point of ripeness taken by the respondent and arguing without any proof nor cover of any legal instrument that the respondent in anyway knew long before the notice dated 12 June 2024 that the applicant was not going to amend or supplement its papers after receiving the rule 53 record. must state from the outset that, in my view,

[15] In all the above circumstances it was clear to this court that there was no way the application could be heard regard being had to the following:

15.1 The special allocation approved by the Judge President was not for one unopposed application but for all the matters as per the motivation in the request.

15.2 There was no way the Judge President could have referred an unopposed application to the special allocation roll and it made no sense that 3 to 5 days could have been requested by the applicant for one as yet not opposed application.

15.3 The respondent was legally correct to state that in terms of the rules of court they still had time to file an answer.

15.4 The notice of set down filed and served by the applicant did not set the rest of the matters down as per the motivation of the request forwarded to the Judge President. It clearly only set down this application.

[16] It is for those reasons that the matter was removed from the roll.

REGARDING COSTS

[17] It is trite that costs lie primarily within the discretion of the court. It is further so that mulcting a party with a punitive costs order is motivated in the main by misconduct of a party which is of such a nature that it attracts a court's opprobrium.

[18] While the reasons for punitive costs order were expressed on the record on 19 June 2024 and were heard by the applicant now seeking reasons, I oblige the applicant by indicating the following as that which attracted my serious frown on the applicant reflected in costs on attorney and client scale:

18.1 The view this court has that the applicant misled the Judge President in his request for special allocation request letter in seeking allocation of his application when on 27 March 2024 (the date of the letter of request) he knew that the respondent had not yet filed an answering affidavit and indeed that he had not yet filed his rule 53 notice not to amend or supplement his papers. He thus applied for date knowing fully well the matter was not ripe.

18.2 The applicant opportunistically set only his application down when he knew that his request for special allocation had been motivated on the basis of hearing all the applications under this case number in their entirety.

18.4 The applicant sought to irregularly and probably by sleight of hand bring an "unopposed" application to a special allocation roll callously trampling on all manner of rules and directives in the process.

18.5 Even when it was pointed out to the applicant's counsel by the court that his own letter requesting special allocation did not support his desired approach from whichever angle the matter was approached the applicant persisted nonchalantly with a desire to be heard on an allegedly unopposed basis.

[19] Accordingly, a punitive costs order against the applicant was, in view, called for and was invited by the applicant himself in this matter.

MALOSE S MONENE

ACTING JUDGE OF THE HIGH COURT,

LIMPOPO DIVISION, POLOKWANE

APPEARANCES

Heard on : 18 and 19 June 2024

Reasons

delivered on : 12 July 2024 For the Applicant : Adv. M J Mohoto : Instructed by Letsela Nkondo Associates Inc : Tel: - 015 880 2031 : Email: admin@letselankondoinc.co.za For the Respondent : Mr A M Vilakazi// Adv T Raselebana : Instructed by A M Vilakazi Tau Inc. Attorneys : Tel: 015 291 1975 : Email: info@vilakazitauattorneys.com

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