

SOUTH AFRICA / JUDGMENT

O.K.M.M v L.M.P.M and Another (2025/040036) [2025] ZAGPPHC 464 (25 April 2025) [2025] ZAGPPHC 464

COURT

North Gauteng High Court, Pretoria

BEFORE

Yende

CASE / FILE NUMBER

2025/040036

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IN

THE HIGH COURT OF SOUTH AFRICA

GAUTENG

DIVISION, PRETORIA

Case

No. 2025-040036

1.

REPORTABLE: NO

2.

OF INTEREST TO OTHER JUDGES: NO

3.

REVISED: NO

DATE:

25 April 2025

SIGNATURE

In

the matter between: M[...]:
 O[...] K[...] M[...]
 Applicant
 And
 M[...]: L[...]
 M[...] P[...]

MATJEE: TSHEPO JOHANNES
 First Respondent
 Second Respondent

JUDGMENT

YENDE AJ

[1] This is an opposed enforcement application in terms of section 18 (1) and (3) of the Superior Courts Act 10 of 2013, in terms of which the applicant seeks an order that the operation and execution of the order of Justice Mokose of 2 April 2025[1], shall not be suspended pending final determination of all present and future applications for leave to appeal or appeals lodged by the second

respondent.

[2] The applicant contends that this application is factually in that the second respondent lodged his application for leave to appeal on 8 April 2025, this being the date on which the Justice Mokose order lost its efficacy and the applicant's urgency began. Immediately thereafter, on 9 April 2025, the Applicant launched the present agent application which points to the applicant's

promptness in bringing her application before Court.

[3] The applicant contends further that the Superior Courts Act 10 of 2013 treats the enforceability of a judgment pending appeal processes as inherently urgent, thus condoning the applicant's non-compliance with the prescribed forms, manner of service and time periods in terms of the Rules of the above the Honourable Court and permitting this application to be heard as one of urgency in terms of Rule 6 (12) of the Uniform Rules of Court.

[3.1] The applicant contends that she will not obtain substantial redress at a hearing in due course if the processes of appeal unfold in the ordinary course, thus it is for that reason that the section 18 (3) procedure is therefore manifestly inherently urgent.

The applicant's main contentions ad exceptional circumstances are interalia that:

[4] The applicant was in peaceful and undisturbed possession of immovable property situated at number 6[...] M[...] Way, Xanadu Nature Estate, Hartbeespoort, North-West ("the matrimonial home"). The second respondent dispossessed the applicant of the matrimonial

home by terminating the water and electricity supply as well as by disconnecting and removing solar equipment mounted on the wall in the garage for consequent to his non-payment of municipal charges as well as the home owners' association levies. The second respondent has been throughout responsible for payment of same.

[4.1] The applicant is a chronic patient and suffers from a chronic condition. Her possession of the matrimonial home was surreptitiously spoliated by the second respondent during her temporary hospitalisation.

[4.2] The applicant urgently needs water, electricity and solar equipment to be restored by the second respondent at the immovable property situated at number 6[...] M[...] Way, Xanadu Nature Estate, Hartbeespoort, North-West ("the matrimonial home") which has been cut off by the second respondent while she was hospitalized between the 18 March 2025 until discharged on Sunday 23 March 2025.

[4.3] Should the Justice Mokose order not be put into operation with immediate effect, it would result in the second respondent who has unlawfully spoliated the applicant of her peaceful and undisturbed possession and occupation of the matrimonial home, benefiting from his unlawful conduct. The severity of the impact of the suspension of the Mokose J order is catastrophic on the applicant and two of her minor children whose entire livelihoods and existence have been in the matrimonial home.

[4.4] The second respondent previously launched an application for leave to appeal an anti-dissipation order granted by Nyathi J in the above Honourable Court in favour of the Applicant on 27 September 2024, under case number 061379/2024, in connection with the matrimonial home, which application for leave to appeal the second respondent left dormant until it lapsed. Thus, the enforcement of Justice Mokose order will incentivise the second respondent to pursue his appeal with the necessary vigour since he has been demonstrated to have a tendency of launching applications for leave to appeal and simply leaving them dormant.

The applicant's main contentions ad irreparable harm included interalia that:

[5] The Applicant has been deprived of possession and occupation of the matrimonial home on an ongoing basis, as such, she continuously suffers irreparable harm and prejudice with each day that passes. That at the time of the hearing of the present application, the Applicant would have been deprived of possession of the matrimonial home for a full month.

[5.1] The applicant further contends that the right of possession is inextricably linked to time in that a period of enjoyment of such a right cannot be restored after the fact of its deprivation. A period of unlawful spoliation cannot be taken out of the hands of the second respondent, after that time has passed, to be handed back to the Applicant.

[5.2] The applicant averred that the second respondent will not suffer any irreparable harm if the order of Justice Mokose of 2 April 2025, is not be suspended pending his application for leave to appeal or appeal. That there is no impediment to the second respondent bringing

eviction proceedings against the applicant for her ejectment. Should the second respondent so choose, he may, without waiting for the appeal process to unfold, pursue eviction proceedings against the applicant alternatively, the second respondent may also if needs be instituting legal proceedings against the applicant for the recovery of the outstanding municipal debt that he claims the applicant has accumulated by virtue of her occupation of the matrimonial home.

[5.3] The applicant further contends that she will not be able to obtain substantial redress at a hearing in due course unless the order sought in her Notice of Motion to is granted on urgent basis. Since this flows from the nature of the right she sought to vindicate through Justice Mokose order, being a possessory right.

SECOND RESPONDENT'S MAIN CONTENTIONS:

- [6] The second respondent opposes this application and argues that the applicant is accommodated by her loving family and is subjected to daily support and warmth of her family and parents. The second respondent argues further that, the applicant continues to coexist with her children and she is gainfully employed earning a substantial salary.
- [7] More over the second respondent contends that the applicant owns an immovable property at 6[...] B[...] Crescent, Pretoria North, 0182 which is a 3-bedroom house, with 2 bathrooms, kitchen, sitting room and a double garage which is unoccupied she can relocate to same. The second respondent does not deny that the applicant has chronic illness but maintains that the Applicant has a Bestmed medical aid scheme and therefore her chronic illness is treated by top medical practitioners and in private medical facilities.
- [8] In the main the second respondent complains that he has got no means to pay for the Municipality debts thus if Justice Mokose order is enforced the second respondent will be bound to be in contempt of the same court order due to financial constraints. The second respondent argued that the applicant failed to join the Municipality who cut the water and electricity to the matrimonial

home, the party to whom this application ought to have been directed to. As a result of this non joinder, the entire case before this honourable court falls and must be dismissed with costs.

Legal frame work.

- [9] Section 18 of the Superior Courts Act provides in the relevant part as follows that

“Suspension of decision pending appeal: -

‘(1) Subject to subsections (2) and (3), and unless the court under exceptional circumstances orders otherwise, the operation and execution of a decision which is the subject of an application for leave to appeal or of an appeal, is suspended pending the decision of the application or appeal.

(2)

(3) A court may only order otherwise as contemplated in subsection

(1) or (2), if the party who applied to the court to order otherwise, in addition proves on a balance of probabilities that he or she will suffer irreparable harm if the court does not so order and that the other party will not suffer irreparable harm if the court so orders.

(4) If a court orders otherwise, as contemplated in subsection (1)—

(i) the court must immediately record its reasons for doing so;

(ii) the aggrieved party has an automatic right of appeal to the next highest court;

(iii) the court hearing such an appeal must deal with it as a matter of extreme urgency; and

(iv) such order will be automatically suspended, pending the outcome of such appeal.

[10] When considering the legal framework mentioned supra it is apposite in section 18(3) of the Superior Courts Act that it allows for the execution of a court order, despite an appeal, if certain conditions are met. In casu, the applicant is seeking an order enforcing the order of Justice Mokose which order was obtained consequent to the second respondent having acted unlawfully and in disregard of the law and the rule of law. The second respondent has noted an appeal against the order of Justice Mokose which in effect means that the second respondent who has by all accounts, made himself guilty of self-help, having acted unlawfully and disregarded the rule of law must benefit from such conduct (Which conduct Justice Mokose has pronounced on its unlawfulness) cannot and should not be countenanced.

[11] In terms of section 18(3), the applicant(s) seeking enforcement of the order must prove on balance of probabilities that they will suffer irreparable harm if the execution of the order is suspended, and that the respondent(s) will not suffer irreparable harm if the execution proceeds. The court must then weigh up the potential harm to both parties to determine whether the exceptional circumstances pleaded warrants allowing the execution to proceed. Lastly the exceptional circumstances pleaded must be unusual or extraordinary to justify overriding the general rule of suspension of orders pending the appeal process.

[12] The Supreme Court of Appeal has held that the prospects of success on appeal, or lack thereof, are an important

consideration[2]. The enquiry as to the existence of ‘exceptional circumstance’ is a factual one and the court has discretion to exercise[3]. In casu, I find that there are exceptional circumstances present in this matter as mentioned supra. In deed the applicant would suffer

severe irreparable harm if Justice Mokose Order is suspended pending the appeal process launched by the second respondent. The second respondent has demonstrated that in the past he had once launched an application for leave to appeal an anti-dissipation order granted in favour of the applicant on 27 September 2024 under case number 061379/2024 pertaining to the matrimonial home -which application the second respondent left dormant until it lapsed.

- [13] I have weighed more on this aspect as the same gives the court an impression that the second respondent has also launched the present appeal against Justice Mokose order in order to have same suspended and later not pursue the appeal processes until it is dormant. Thus, benefiting from his already pronounced unlawful conduct. The second respondent has failed to demonstrate that he will suffer irreparable harm if Justice Mokose order is not suspended save to decry the fact that he will not be able to pay the Municipality the arrear rates and taxes which issue was never pleaded during the spoliation application.
- [14] I found that when considering the both submissions by the counsel for the applicant as well as the counsel for the second respondent I am constrained to find that the applicant has demonstrated that exceptional circumstances exist that entitles her to an order that the operation of Justice Mokose granted on 2nd April 2025 shall not be suspended. I am therefore satisfied on the balance of probabilities that indeed the applicant will suffer irreparable harm if the relief sought is not granted, further that the applicant has demonstrated exceptional circumstances entitling her to an order enforcing the order of Justice Mokose pending the second respondent's leave to appeal and appeal.
- [15] I found that this matter warrants urgency by virtue of its nature and that indeed the requirement of Rule 6(12) of the Uniform Rules of the Court has been met.
- [12] As the consequence, I make the following order.

Order

1. In terms of section 18(1), read with section 18(3), of Act 10 of 2013[4], it is ordered that the operation and execution of the order of Justice Mokose granted on 2nd April 2025, shall not be suspended pending a final decision on the second respondent's application for leave to appeal and in the event of leave to appeal granted, the final outcome of such appeal process;
2. The second respondent shall pay the cost of this urgent application on attorney and client scale B.

J YENDE

ACTING JUDGE OF THE HIGH COURT

This judgment was prepared by YENDE AJ. It is handed down electronically by circulation to the parties/their legal representatives by e-mail and uploaded on Caselines electronic platform and by publication of the judgment to the South African Legal Information Institute. The date for hand-down is deemed 25 April 2025.

Appearances:

Attorney for Applicant: Mr S Twala From Twala Attorneys Inc C/O Hack Stupel & Ross Attorneys
2nd floor, Standard Bank Chambers Church Square, Pretoria Advocate for Second Respondent: P
Mafu Instructed by: Masipa Attorneys. 1027 Stanza Bopape Street Hatfield, Pretoria Heard: 23
April 2025 Delivered: 25 April 2025

- [1] Justice Mokose order granted on 2 April 2025 -Spoliation order.
- [2] University of Free State v AfriForum and Another 2017 (5) SA 402 (SCA) at paragraph(s) 14-15
- [3] Incubeta Holdings (Pty) Ltd and Another v Ellis and Another 2014 (3) SA 189 (GJ).
- [4] Superior Courts Act 10 of 2013

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Prepared on 9 October 2026 · Esheria