

SOUTH AFRICA / JUDGMENT

Rampagane N.O and Others v Master of the
High Court Mafikeng and Others (UM20/2023)
[2024] ZANWHC 241 (18 September 2024)
[2024] ZANWHC 241

COURT

North West High Court, Mafikeng

BEFORE

O.Y Dibetso-Bodibe

CASE / FILE NUMBER

UM20/2023

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IN THE HIGH COURT OF SOUTH AFRICA

NORTH WEST PROVINCIAL DIVISION, MAHIKENG

Case No.: UM20/2023

Reportable: NO

Circulate to Judges: NO

Circulate to Magistrates: NO

Circulate to Regional Magistrates: NO

In the matter between: RAMPAGANE MOLEMI GERT; (N.O CHAIRPERSON 1st Applicant
RAMASESANE OIKANYENG ZACHARIA; (N.O DEPUTY CHAIRPERSON) 2nd Applicant
MARUMOLWA ESTER LESEGO; (N.O SECRETARY) 3rd Applicant POLENG BONTLEENG GRANNY;
(N.O DEPUTY SECRETARY) 4th Applicant GOPANE GOEMEGONE HARRINGTON; (N.O THE
TREASURER) 5th Applicant TSHABANG SECHOGELA HARRISON; (N.O TRUSTEE) 6th Applicant
MOSIBOTSANG REAGISANG; (N.O TRUSTEE) 7th Applicant TIRO SEABE PETRUS; (N.O TRUSTEE)
8th Applicant MOSWEU MPHOENTLE PATRICIA; (N.O TRUSTEE) 9th Applicant MARIBALAND
DEVELOPMENT TRUST (IT 54/2010) 10th Applicant and MASTER OF THE HIGH COURT:
MAFIKENG 1st Respondent MOGOMOTSI HENDRICK MMUTLE 2nd Respondent JOSEPH
SERANYANE NDLOVU 3rd Respondent KAENE INNOCENT MELOMI 4th Respondent
KGOSIMODIMO REGINALD KGETSANE 5th Respondent LEBANG ERNEST NAITLHOI 6th
Respondent BATLANG MIRANDA MOKGOSI 7th Respondent DAVID TSELAYABOTLHE MOLUSI
8th Respondent JEFFREY NKARABANG MADOLA 9th Respondent MOSIMANEGAPE HAROLD
SEPAKO 10th Respondent LBOGANG EMMANUEL XABA 11th Respondent GAORABAONE
EMMANUEL LEUTLWETSE 12th Respondent

REASONS

FOR THE ORDER / JUDGMENT

DIBETSO-BODIBE AJ

INTRODUCTION

- [1] What is the essence of litigation. This is what left my mind pondering, baffled at what it took thus far as litigants ride roughshot over litigation processes and remaining resident in this court, unfettered, as they stand goal posts to goal posts in total disregard of the rules of court.
- [2] “The purpose of the Uniform Rules of Court is to regulate the litigation process, procedures and the exchange of pleadings. The entire process of litigation has to be driven according to the rules of court. The rules set the parameters within which the course of litigation has to proceed. The rules of engagement must therefore be obeyed by litigants. The prime purpose of the court rules is to oil the wheels of justice in order to expedite the resolution of disputes.”[1]
- [3] “A person cannot litigate one thing endlessly ... Parties to a litigation are required to bring their whole case at once rather than re-litigating the same subject matter concerning the same parties in serial litigation. There should be finality in litigation.”[2]
- [4] Litigation and access to courts are constitutional rights that may not be trampled and ridiculed. Litigation must be conducted with the utmost decorum and respect for the rule of law.
- [5] On 21 September 2023, the urgent application in this matter was struck off the roll for lack of urgency and the matter referred to the opposed motion roll for hearing. The order states: -
- “1. *The matter be and is hereby struck from the roll for lack of urgency;*
2. Costs are reserved;
3. The Parties must give effect to the order of Honourable Mr Justice Petersen of 28th day of July 2023;
4. The matter is to be enrolled on the opposed motion roll for hearing;
5. The Applicants should file their Founding Affidavit by the 05th day of October 2023;
6. The Respondents should file their Answering Affidavit by the 19th day of October 2023;
7. If Counter-Applications are to be filed, same shall be filed simultaneously with the founding papers;
8. The Applicants should file their Heads of Argument by the 16th day of November 2023;

9. The Respondents should file their Heads of Argument by the 30th day of November 2023”
- [6] Pursuant to that order, the Respondents filed an application for written reasons for the order granted. I, therefore, provide the reasons hereunder.

MATTER STRUCK OFF THE ROLL FOR LACK OF URGENCY AND RE-ENROLLED ON AN OPPOSED MOTION ROLL

- [7] The matter was struck off the roll for the simple reason that it lacked urgency. Urgency relates to form not substance and is not a prerequisite to a claim for substantive relief. A finding that a matter is not urgent does not mean that there are no merits in the applicant’s case.
- [8] “Where an application is brought on the basis of urgency, the rules of court permit a court to dispense with the forms of service usually required and to dispose of it “as it seems meet” (rule 6(12)(a)). However, where the application lacks the requisite element or degree of urgency, the court can for that reason decline

to exercise its powers under Rule 6(12)(a). The matter is then not properly on the court’s roll and the court declines to hear it. The appropriate order is ordinarily to strike the application from the roll. This enables the applicant to set the matter down again, on proper notice and compliance.”[3]

- [9] Once the issue of urgency is heard and rejected, nothing prevents the court from making any other and further orders in addition to striking the matter off the roll as will be suitable to the facts and circumstances of the case to direct the way forward on the process.
- [10] This matter involves the holding of land through a Trust by an indigenous community. The land is utilised for farming which must be profitable to the community involved. The profitability of a Trust as a business is fundamental to their constitutional rights and revered by the land restitution process. This, by far, supercedes the self-created power struggle of the trustees. Given the superfluous manner in which the whole litigation process has been handled thus far, this Court deemed it expedient to determine the way forward for the just and expeditious finalisation of the matter.
- [11] The Parties are implored to address the issues in the founding papers and/or pleadings and lessen too much reliance on evidentiary proof material. In other words, the pleadings must not be re-enrolled by mere notice of set down unamended and in the state in which they were in the urgent application as the affidavits we prepared in a haste and may not be all inclusive of the relevant evidential material

facts.

- [12] In the premises, I beseech the legal practitioners to approach this Court with decorum, for the benefit of the litigants and in the best interests of the administration of justice.

O.Y DIBETSO-BODIBE

ACTING JUDGE OF THE HIGH COURT

NORTH WEST DIVISION, MAHIKENG

Delivered: This judgment is prepared and authored by the Judge whose name is reflected and is handed down electronically by circulation to the Parties or their legal representatives by email and by release to SAFLII

DATE OF HEARING: 21 September 2023 DATE OF JUDGMENT: 18 September 2024 APPEARANCES FOR THE APPLICANTS: Adv Muza Adv Poee INSTRUCTED BY: Kgomo Attorneys FOR THE 1ST RESPONDENT: The Master of the High Court, Mahikeng FOR THE 2ND TO 12TH RESPONDENTS: Adv Legoabe INSTRUCTED BY: Bamphitile & Associates C/o Sephecholo Lechuti Leseofe Attorneys NOT PARTY TO THE PROCEEDINGS: Tim Du Toit Attorneys INSTRUCTED BY: ABSA Bank C/o Van Rooyen Tlhapi Wessels M Molema Inc

[1] Louw v Grobler and Another (3074/2016) [2016] ZAFSHC 206 (15 December 2016) at para [18]

[2] N.D.C v G.C (14367/2021) [2022] ZAGPHC 125 (21 February 2022) at para [22]

[3] Inzalo Enterprise Management Systems (Pty) Ltd v Mantsopa Local Municipality (3832/2023) [2023] SAFSHC (22 November 2023) at para

[33] (“Inzalo”) and quoting from Commissioner for SARS v Hawker Air Services (Pty) Ltd, Commissioner for SARS v Hawker

Aviation Services Partnership & Others (379/05) [2006] ZASCA 51 (31 March 2006) (“Hawker”)

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Prepared on 14 October 2026 · Esheria