

SOUTH AFRICA / JUDGMENT

Ramuga v Department of Health and Another (29175/20) [2020] ZAGPPHC 402 (30 July 2020)

[2020] ZAGPPHC 402

COURT

North Gauteng High Court, Pretoria

BEFORE

Avvakoumides

CASE / FILE NUMBER

29175/20

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Source record**HIGH COURT OF SOUTH AFRICA
(GAUTENG DIVISION, PRETORIA)**

(1)

REPORTABLE:

YES/NO

(2)

OF

INTEREST TO OTHER JUDGES: YES/NO

(3)

REVISED.

CASE NUMBER: 29175/20

30/7/2020

In

the matter between:

ZIZIPHO

RAMUGA

Applicant

and

THE

DEPARTMENT OF HEALTH

First Respondent

NATIONAL

COMMISSIONER OF POLICE

Second

Respondent

JUDGMENT

AVVAKOUMIDES, AJ

1. This case came before me in the urgent court of the commencing 14 July

2020. All cases during that week were heard via MS Teams.

2. The Applicant sought an order as follows:

2.1 That the body of a child buried on 8 May 2020 in grave number 16, Crystal Park Cemetery (baby section) in Benoni, be exhumed within 5 days of the order.

2.2 That the Respondents conduct DNA tests on the body so exhumed within 5 days.

2.3 Costs against any Respondent who opposes the application.

3. Mr. Marweshe, an attorney, appeared for the Applicant and drew my attention to an email dated 9 July 2020 in terms of which the urgent application was served upon the State Attorney. Due to the disturbing nature of the application and not being satisfied with the email service of the application, I requested Mr. Marweshe to contact two senior State Attorneys on their cellular telephones (such numbers which I personally communicated to Mr. Marweshe) with the request that he calls the State Attorneys to advise them of the application. In addition, and an aspect which I will deal with later, I requested Mr. Marweshe to obtain a confirmatory affidavit of a lady who allegedly advised the Applicant by way of WhatsApp that her baby had not passed on in the hospital and was indeed still at the hospital where she gave birth to the child.

4. I accordingly stood the matter down to later that week. Unbeknown to me Mr. Marweshe fell ill for a few days and reverted to me during the following week. He explained that he had contacted the State

Attorneys who advised him to serve at the reception of the State Attorneys offices. I had, in the interim, advised the Acting Deputy

Judge President that this application had stood over and I was satisfied to hear it as soon as Mr. Marweshe could revert to me.

Under normal circumstances this application would have been removed from the roll, however given the severe and disturbing nature of the application and the allegations which I will deal with hereunder, I decided, in the interests of justice, not to delay the matter any further.

5. On Friday 24 July 2020 the application was heard and Mr. Marweshe submitted that both the State Attorneys had taken cognizance of the application and requested Mr. Marweshe to deliver a copy to the reception at the State Attorney's offices. However, this was not possible as the offices of the State Attorney were closed and we could not leave a copy with the security who had no authority to accept service. Service was thus effected by way of

email to the State Attorney given email address. Furthermore, the lady who advised the Applicant of her baby still being alive and at hospital could not be traced in such a short space of time.

body was released very quickly without any protocol and neither was a "Bl form" filled in by any doctor. No death certificate was issued.

12. The burial was held on 8 May 2020 and prior to the burial it was washed and dressed by the Applicant's mother who also raised her concern that the deceased baby did not look like the Applicant's son. On 10 May, 2020 the Applicant received a WhatsApp voice note from one of the mothers that was in hospital together with the Applicant. Her

name is Simphiwe. Simphiwe advised the Applicant that her son was not dead but that he was placed in an isolated ward with other kids.

13. The Applicant alleges that a decision to bury the child that they were given was taken by her family but she was against such burial from the beginning and that the hospital refused to furnish the Applicant with medical records pertaining to the baby.
14. Having received the WhatsApp voice note from Simphiwe, the Applicant went to the Springs Police Station accompanied by her mother, to open a case of missing persons. This occurred on 11 May 2020 and following this, police officers attended upon the hospital to investigate the Applicant's complaint. The nurses on duty were hostile and unwelcoming. The police officers were able to establish that the body of the child that was given to the Applicant did not wear a name tag as a form of identity. A doctor on duty suggested that due to the uncertainty pertaining to the baby, the body should be exhumed for

DNA tests to be conducted.

According to the Applicant the nurses were not keen on DNA tests. Furthermore, the doctor suggested that due to the inconclusive evidence the Applicant should approach the court for permission to exhume the body for purposes of a DNA test. Apparently, the nurses and matron objected vehemently to the suggestion of the body being exhumed.

15. Later, medical records were handed over to Officer Mnisi of the Springs Police Station and on 29 May 2020 Officer Mnisi contacted the Applicant to accompany him to the hospital for a meeting. The meeting was attended by two doctors and two nurses and during such meeting, the officer "compelled" the Applicant to withdraw the case on the basis that he was satisfied with the explanation proffered by the hospital nurses. The Applicant says that she refused to withdraw

the case.

16. The Applicant explained to the doctor that the body handed to her showed signs of an insertion on the belly of the baby whereafter the doctor confirmed that insertions are applied within 10 days of birth. The Applicant explained to Officer Mnisi that her child did not have any insertions in the belly the last time she saw the baby. The

doctor advised Officer Mnisi that he did not treat the baby but was simply informed by the nurses of what had transpired. The nurses on duty explained that after the baby had died they contacted the police and reported the matter so that the Applicant could be informed of the death on 1 May 2020. However, the Applicant said that there is no record from the police that the hospital had contacted the police station. Furthermore, an officer from the Daveyton Police met the requirements for the relief sought. In my view, even if the DNA results do show that the bay is indeed the Applicant's child it will bring closure to the Applicant who may, despite this trauma, continue with her life. The current position is however untenable, given the allegations in the founding affidavit. Consequently, I am satisfied that the Applicant has made out a proper case for the relief sought. What remains to consider is which Respondent is responsible and able to conduct the DNA tests. In my view, the duty lies on the Second Respondent who should possess adequate forensic personnel with skills for this purpose.

20. I make the following order:

20.1 The Second Respondent, National Commissioner of the South African Police Services is hereby ordered to take all such steps as may be necessary, within 5 days of the date of this order, to exhume the remains of the body buried at Grave 16, Crystal Park Cemetery, Benoni, Baby Section, on 8 May 2020.

20.2 The Second Respondent is ordered to instruct skilled personnel, and to coordinate and take all such steps as may be necessary to conduct DNA tests on the remains of the body exhumed from Grave 16 aforesaid in order to establish whether or not, the remains of the body is the natural child of the Applicant Zizipho Ranuga who resides at M154, Mayfield Extension 45, Daveyton, Gauteng Province. This must be done within 15 days of the exhumation.

20.3 The Second Respondent is ordered to provide the Applicant with the results and the conclusions reached in such DNA testing in writing immediately after the results of the DNA are known. To the extent necessary the Applicant shall cooperate with all reasonable and lawful requests by the Second Respondent and any other officials involved in the DNA process.

20.4 In the event that the DNA results show that the baby is not the child of the Applicant, the Second Respondent is ordered to immediately register a case of a missing child and any other competent case, and to commence with the necessary investigation to locate the baby of the Applicant and report to the Applicant on its investigation. Moreover, the Second Respondent is also ordered to fully investigate the circumstances surrounding the deceased baby.

20.5 Should the Second Respondent fail to comply with the terms of this order, the Applicant is hereby granted leave to approach the court, on supplemented papers, for appropriate relief.

20.6 It is ordered that a copy of this judgment be delivered to the offices of the National Prosecuting Authority for its attention and consideration of any action which may be warranted.

G.T. AVVAKOUMIDES

ACTING JUDGE OF THE HIGH COURT

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Prepared on 13 October 2026 · Esheria