

SOUTH AFRICA / JUDGMENT

Ranta and Others v Ranta (93454/2015) [2022] ZAGPPHC 498 (7 July 2022)

[2022] ZAGPPHC 498

COURT

North Gauteng High Court, Pretoria

BEFORE

Ndlovane

CASE / FILE NUMBER

93454/2015

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REPUBLIC OF SOUTH AFRICA

IN THE HIGH COURT OF SOUTH AFRICA

GAUTENG DIVISION, PRETORIA

CASE NO: 93454/2015

REPORTABLE: NO

OF INTEREST TO OTHER JUDGES: NO

REVISED

07 JULY 2022

In the matter between:

ZACHARIA DITSHEGO RANTA

First Applicant

ZACHARIA DITSHEGO RANTA N.O.

Second Applicant

THEMANE JEREMIAH TIBANE N.O.

Third Applicant

DOREEN NTEBENG RANTA N.O.

Fourth Applicant

[in their capacities as trustees for the time being of the

Ranta family trust (Registration Number: IT 002753/2016(T))

And

TSHEGOFATSO RANTA (NEE MARINGA)

Respondent

In re:

TSHEGOFATSO RANTA (NEE MARINGA)

Applicant

ZACHARIA DITSHEGO RANTA

First Respondent

SAAYMAN WD PROKUREURS

Second Respondent

ZACHARIA DITSHEGO RANTA N.O.

Third Respondent

THEMANE JEREMIAH TIBANE N.O.

Fourth Respondent

DOREEN NTEBENG RANTA N.O.

Fifth Respondent

REASONS

FOR ORDER GRANTED ON 26 MAY 2022

NDLOKOVANE AJ

INTRODUCTION

[1.] This application was allocated to me for adjudication as matter no:103, on the unopposed motion roll of 26 May 2022.

[2.] Both parties' legal representatives advised me from the bar that they have since agreed to have the matter removed from the roll as it has since become opposed. However, they could not agree on the costs occasioned by the removal. The counsel for respondent submitted that the issue of costs ought to be reserved for later determination, whereas, the applicant's counsel at that time stated that he held the instructions to seek a costs order against the respondent occasioned by the removal.

[3.] After hearing submissions and considered the papers before me, I granted the following order:

“Application is removed from the roll.

The respondent to pay the wasted costs occasioned by the removal”

[4.] On the even date, I received correspondence from the respondent’s attorneys of record, wherein the respondent’s are requesting, in terms of Uniform Rule 49(c), that I furnish them with reasons for the judgement and order that I granted as aforesaid.

[5.] I hasten to mention that the obligation to give reasons (as I shall do hereunder), fulfils a variety of functions. It is expedient to mention a few. Reasons serve to improve the quality of decision-making process, justice and to ensure accountability to the

parties involved in the dispute and to the public at large.

[6.] They inform the person affected by the decision why the decision-maker thinks that it is justified. Reasons enable the person

affected to determine whether he or she should abide the decision or take steps to have it corrected or set aside. This is not only fair but also conducive to public confidence.

[7.] Furthermore, rational criticism of the decision maker can only be made when the reasons for it are known. This also helps the court of appeal to determine whether the court a quo applied the correct principle of law in the decision making.

THE PARTIES

[8.] The first and second applicant is Mr. TSHEGOFATSA RANTA, a self- employed businessman and was married to the respondent and such marriage was dissolved.

[9.] The Third Applicant is THEMANE JEREMIAH TIBANE N.O and the Fourth Applicant is DOREEN NTEBENG RANTA N.O both cited in their capacities as trustees for the time being of the Family Trust.

[10.] The Respondent is TSHEGOFATSO RANTA (NEE MARINGA), an adult female currently residing at Unit 1, Willow Acres, ERF 411 Willow Acres Extension Hoopoe Crescent, Willow Acres Estate, Pretoria.

THE RELIEF CLAIMED

[11.] Ex facie the notice of motion, the applicants seeks the following relief which is quoted verbatim:

“This is an application in terms of Chapter 2.9 read with Chapter 2.11 of the Judge President's Practice Directive 2 of 2020, in which the First, Third, Fourth and Fifth Respondents(applicant’s in this application) seek an order in the following terms: 9.1 That the Applicant(Respondent in this application), be compelled to deliver and/or upload her heads of arguments and practise note within 3 days of the order, failing which, the applicants be granted leave to approach this court on the same

papers, duly supplemented to the extent necessary, for an order striking out the applicant's claims under case number:93454/15 dated 3 September 2021, with costs.....(my own emphasis)".

FACTUAL

BACKGROUND

The relevant factual background has been succinctly summarised in the founding papers of the application to compel as follows:

[12.] "On or about 26 January 2021, the Family Trust brought an eviction application in terms of Section 4(1) of the Prevention of illegal Eviction from and Unlawful Occupation of Land Act 19 of 1998 ("the "PIE Act") in the above Honourable Court under

case number 3292/2021 for inter alia an order evicting the Applicant and all those claiming occupation by, through or under the Applicant from immovable property which is situated at 411A Hoopoe Crescent, Willow Acres Estate, Pretoria (the "Property") (the "Eviction Application"). the Family Trust is the registered owner of the Property and that the Applicant enjoyed a conditional and/or limited right to occupy the Property in terms of the provisions of a divorce settlement Applicant and the First Respondent entered into (the "Settlement Agreement"), and which was made an order of court of 9 March 2016.

The Eviction application was brought after the Applicant's limited right to occupy the Property as aforesaid was duly terminated. The Eviction application was served on the Applicant personally by way of Sheriff on 11 February 2021. The dies afforded to the Applicant to oppose the eviction application expired on 18 February 2021. Despite this, the Applicant failed to deliver a notice of intention to oppose. The Family Trust thereafter launched an ex parte application in terms of Section 4(2) of the PIE Act and on or about 3 August 2021 the Honourable Mr Justice Strydom authorised the form and content of the notice in terms of Section 4(2) of the PIE Act, and directed the Sheriff to serve the aforesaid notice, together with a copy of the Court Order on the Respondents in accordance with the provisions of Rule 4(1) of the Uniform Rules of Court no later than 14 (fourteen) days before the hearing of the main eviction application.

On 17 August 2021, and in accordance with the aforesaid court order, the Sheriff served a copy of the court order (including the Section 4(2) notice) on the Applicant.

On 18 August 2021, our offices also emailed a copy of the court order (including the Section 4(2) notice) to the Applicant. The Section 4(2) notice sets out, inter alia, that the Eviction Application was to be heard on 10 September 2021.

On 25 August 2021, our offices served a copy of the notice of set down on the Applicant and on her legal representatives, once again

indicating that the eviction application was to be heard on 10 September 2021.

On or about 3 September 2021 the Applicant, through her attorneys of record, however, brought an application under case number 93454/2015

against the Respondents in which the Applicant inter alia seeks an order rescinding and setting aside the Settlement Agreement and the Court order in which the marriage between the Applicant and the First Respondent was dissolved and the Settlement Agreement was made an order of court (the "Setting Aside Application").

On 7 September 2021 (a mere 3 days before the hearing of the Eviction Application) the Applicant delivered an answering affidavit in the Eviction Application.

On 10 September 2021, the Eviction Application was removed from the roll with costs reserved, and the Family Trust has subsequently delivered a replying affidavit in the Eviction Application. The Eviction Application is currently pending. On 29 September 2021 the First, Third, Fourth and Fifth Respondents delivered an answering affidavit in the Setting Aside Application.

On 16 November 2021 the First, Third, Fourth and Fifth Respondents delivered a consolidated index together with their heads of argument,

practice note and chronology in the Setting Aside Application. The Applicant failed to deliver her practice note and heads of argument

in the Setting Aside Application within a period of 10 (ten) days from the date of receipt of the First, Third, Fourth and Fifth

Respondents 'heads of argument, practice note, chronology and consolidated index, or at all.

On 2 December 2021, the First, Third, Fourth and Fifth Respondents 'attorneys of record addressed a letter to the Applicant's

attorneys of record in which inter alia, they were notified that the Applicant's heads of argument were due on 1 December 2021, and that should they not deliver the Applicant's heads of argument by close of business on Monday, 6 December 2021, they were instructed to bring an application to compel the Applicant to file her heads of argument.

The Respondent on the eve of the hearing of the application to compel them has brought a joinder application. The First, Third, Fourth and Fifth Applicants, on the other hand, is severely prejudiced as they are precluded from continuing with the Eviction Application until such time as the Setting Aside Application has been finalised, and it is submitted that there is accordingly no incentive, benefit and/or rush for the Applicant to bring the proposed joinder application and/or to prosecute the Setting Aside Application as she continues to reside at the Property and enjoy the benefits arising therefrom at the expense of the Family Trust. The First, Third, Fourth and Fifth Respondents wish to enrol the application for hearing on the opposed motion court, but is precluded from doing so due to the Applicant's failure to deliver her heads of argument, The Applicants are accordingly being prejudiced in this regard, and have no choice but to bring this application for the relief sought".

THE LAW ON COSTS

[13.] The general rule is that costs follow the event, meaning the successful party should be awarded its costs. However, this is

subject to an overriding principle that the court has a discretion and such discretion must be exercised judicially upon a consideration

of facts of each case. (See *City of Cape Town v Rudolph* 2004(5) SA 39 C at 89 (C)).

EVALUATION

[14.] In the present case, I am of the view that the merits of the application are of no concern in determining an appropriate costs

order. On 24 May 2022, the respondent filed an intention to oppose the application to compel delivery of her heads of argument. This notice was served electronically to the following email addresses: jrajpal@fasken.com; abuthcher@fasken.com. It is common cause

that these are the email addresses belonging to the attorneys of record for the first, third, fourth and fifth applicants.

[15.] After considering the submissions by both counsel, and having considered the papers before me, I was satisfied that the application

was properly enrolled before me and there was no reason on the hearing date to reserve issue on costs and/or burden another court

with the determination of the issue relating to costs as suggested by the counsel for the respondent. Further, the directives of this court are clear as to what a party in an unopposed matter should do in the event that the matter become opposed. As it was the case in the present matter.

[16.] When the applicants did not receive any co-operation timeously as demonstrated above from the respondent after the notice of motion and correspondence, they had no option but to proceed to brief counsel to attend to the matter at court. Viewed holistically and based on evidence at my disposal, the respondent was to be blamed for the removal and therefore ought to pay the costs occasioned by it.

ORDER

[17.] Therefore, the following order was granted:

17.1. The matter is removed from the roll.

17.2. The respondent was ordered to pay the costs occasioned by the removal.

NDLOKOVANE

ACTING JUDGE OF THE HIGH

Appearances

Attorney for the Applicants : Machaba Attorneys

Attorney for the Respondents : Fasken (INC in SA as Bell Dewar INC)

Date of Hearing

: 26 May 2022

Date of Judgment

: 07 July 2022

Judgment

transmitted electronically

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Prepared on 9 October 2026 · Esheria