

SOUTH AFRICA / JUDGMENT

S.M v L.M and Another (81643/2023)

[2024] ZAGPJHC 815 (14 August 2024)

[2024] ZAGPJHC 815**COURT**

South Gauteng High Court, Johannesburg

BEFORE

Segal

CASE / FILE NUMBER

81643/2023

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Policy**IN THE HIGH COURT OF****SOUTH AFRICA****GAUTENG LOCAL****DIVISION, JOHANNESBURG****1.****REPORTABLE: YES/NO****2.****OF INTEREST TO OTHER JUDGES: YES/NO****3.****REVISED:**

14

August 2024

CASE

NO: 81643/2023

In the matter between: S[...]
M[...]
Applicant
and
L[...]
M[...]
First
Respondent
MAGISTRATE
BOOYSEN
Second
Respondent

JUDGMENT

SEGAL AJ:

[1] This matter was set down on the unopposed roll of the Family Court for the week of 29 July 2024. It is an application in terms of Uniform Rule of Court 53, for -:

1.1 an order reviewing and setting aside the judgment granted on 7 August 2023 by the Second Respondent;

1.2 calling upon the Second Respondent to dispatch the record of the proceedings of the court 20 Domestic Violence Court sitting at the Magisterial District of Johannesburg, Randburg, under case number 2046/2022, as well as the record of proceedings of court 3 Criminal Court under case number 3/1263/2022, together with such reasons as he is by law required to give and to notify the Applicant that he has done so and transmit the record to the Registrar of the High Court;

1.3 pending determination of the relief sought in Part B, that the First Respondent be interdicted from evicting the Applicant and her two minor children from the shared residence, situate at Apartment 1[...], B[...] 8[...] K[...] Street, S[...], Johannesburg;

1.4 pending the determination of Part B that the First Respondent be interdicted from making attempts to have the Applicant arrested without good cause or threatening to do so.

[2] Notwithstanding the fact that the matter was set down on the unopposed roll, the pro bono counsel for the First Respondent, Ms Olwagen-Meyer attended court to seek a postponement of the matter on behalf of the First Respondent and to permit the First Respondent to file an opposing affidavit within 15 days of the date upon which the matter was heard.

[3] A substantive postponement application was brought in support of the postponement, but this affidavit was neither deposed to by the First Respondent nor her attorney of record. It was in fact deposed to by a secretary employed at the firm representing the First Respondent, namely Sipho Jackie Ratshipaladza who contended that she was permitted to depose to the affidavit on behalf of the First Respondent “by virtue of a Legal Practice Council appointment appointing Fick Haupt Inc. to act as her attorney of record in the

matter”.

- [4] I am not aware of any authority for the proposition that a secretary at a firm of attorneys is permitted to depose to an affidavit on behalf of a client in circumstances where the firm is appointed by the Legal Practice Council or at all. I consider this to be inappropriate and irregular.
- [5] The First Respondent after having been afforded the assistance of a pro bono attorney and counsel simply failed to take any steps to advance her case and made herself uncontactable for over a month. It ill behoves a litigant who has the benefit of pro bono legal representation to leave the province without providing contact details to her legal representatives. The complete lack of

cooperation on her part is not only disrespectful to this Court and to her pro bono legal team, but also unacceptable. It has occasioned an inexcusable delay of the matter in circumstances where the matter is a serious one which affects the interests of 2 minor children.

- [6] The matter was also opposed by the Second Respondent who appeared in person and indicated to the court that he had not received the application which, although apparently served on a senior official at the Magistrates Court, had not been brought to his attention. The Second Respondent indicated that he intends to oppose the application and seeks an opportunity to do so. I accept that for reasons beyond the control of the Second Respondent, the application was regrettably not brought to his attention.
- [7] The Second Respondent pointed out to the court that he had noticed that on Caselines Paginated Page 02-1 to 02-3, the Applicant had withdrawn the review application by notice. The notice to which he referred is headed “Notice of Removal” in the tramlines, but the body of the notice states:-

“KINDLY NOTE the Applicant hereby withdraws the Review Application set down for 03 June 2023 (sic).”

- [8] He contended that in light of this withdrawal, there was no longer a case to be met.
- [9] The Applicant who is a junior Advocate of this Honourable Court and who represents herself, indicated that she had erroneously stated that she withdraws the application when she in fact intended only to remove the application from the roll for that week. In this regard, she indicated that the heading of the notice was Notice of Removal.
- [10] It was furthermore her case that her intention to pursue the matter was manifest from her conduct since May 2024 in that she had proceeded with the matter in earnest, despite the dilatory conduct on the part of the First Respondent, who, after having been provided with pro bono attorneys and counsel disappeared and made herself uncontactable in consequence of which her affidavit could not be prepared or delivered.

[11] This matter is one which concerns the court in that it relates to a mother and daughter co-residing in an apartment with two minor children in circumstances where there is ill-feeling and hostility pervading their home. This atmosphere cannot be good for the children and their emotional wellbeing is at stake.

[12] The matter must be progressed and determined without delay in the interests of closure and certainty for the minor children at the very least.

[13] I accept that:-

13.1 the Applicant did not intend to withdraw her application but rather to remove it from the roll for that particular week and that the reference to the withdrawal was an error;

13.2 the First Respondent wishes to oppose the application and despite her dilatory conduct, shall be afforded an opportunity to do so;

13.3 the Second Respondent wishes to oppose the application and must be afforded an opportunity to do so.

[14] In the circumstances, I grant an order in the following terms:-

14.1 The application is postponed sine die.

14.2 The First Respondent is ordered to file her answering affidavit should she wish to proceed with her opposition by 5 September 2024.

14.3 The Second Respondent is ordered to file his answering affidavit should he wish to proceed with his opposition by 5 September 2024.

14.4 No order is made as to costs as the Applicant and Second Respondent appear in person; and the First Respondent's legal representatives act pro bono.

SEGAL AJ

ACTING JUDGE OF THE HIGH COURT

GAUTENG LOCAL DIVISION, JOHANNESBURG

Delivered: This judgment was prepared and authored by the Judge whose name is reflected and is handed down electronically by circulation to the Parties/their legal representatives by email and by uploading it to the electronic file of this matter on CaseLines. The date for hand-down is deemed to be on 14 August 2024

Heard on: 31 July 2024 Delivered on: 14 August 2024 Appearances: Ms S M[...] (in person): for the Applicant Adv G Olwagen-Meyer: Magistrate Booysen (in person): for the First Respondent for the Second Respondent

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Prepared on 12 October 2026 · Esheria