

SOUTH AFRICA / JUDGMENT

S.N.N v Shai and Another (55481/13) [2018] ZAGPPHC 467 (4 May 2018)

[2018] ZAGPPHC 467

COURT

North Gauteng High Court, Pretoria

BEFORE

MMP Mdalana-Mayisela

CASE / FILE NUMBER

55481/13

Source: saflii.org · Research copy typeset by Esheria. Not court-issued or certified.

SAFLII Note: Certain personal/private details of parties or witnesses have been redacted from this document in compliance with the law and SAFLII Policy

IN THE HIGH COURT OF SOUTH AFRICA

(GAUTENG DIVISION, PRETORIA)

- (1) NOT REPORTABLE
- (2) NOT OF INTEREST TO OTHER JUDGES
- (3) REVISED.

CASE NO: 55481/13

4/5/2018

S N N

Applicant

and

KGAMA GLADDEN SHAI, MAGISTRATE (ACTING)

1ST Respondent

NORTH EASTERN DIVORCE COURT, NELSPRUIT

P D N

2ND Respondent

RULING

MDALANA-MAYISELA AJ

1. On 18 March 2016 an order was made by this Court per Moseamo AJ, directing that the first respondent (Acting Magistrate of the North

Eastern Divorce Court, Nelspruit) Mr Kgama Gladden Shai, should furnish the applicant with written reasons for the order (divorce

order) granted on the 5th December 2011 under Case No: 4651/10 held at Nelspruit Regional Court Division within 30 days of the receipt of the order.

2. Notwithstanding the aforesaid order the first respondent has to date not furnished written reasons for his order.

3. The order of Moseamo AJ was made on the basis of an application the applicant launched in two parts. Part A was granted by Moseamo AJ and Part B stood over for determination on a later date. In Part B the applicant seeks an order that:

3.1 The Court order granted by the first respondent on 05 December 2011 under Case No: 4651/10 at Regional Court Division held at Nelspruit is set aside;

3.2 Directing that the divorce proceedings that took place be remitted to Regional Court Division, Nelspruit to commence de nova.

4. Part B of the application came before me on 30 April 2018. The application was opposed by the second respondent who filed an answering

affidavit. The first respondent did not file any opposing papers.

5. When the matter was called. I raised with the parties legal representatives whether the parties should not consider reconstruction of the record first before the matter can be dealt with by the Court, particularly given the fact that both the Acting Magistrate's reasons and the record were absent. After deliberation with the parties legal representatives they were ad idem that reconstruction of the record was an ideal option save that the applicant's legal representative intimated that both the file and the tapes were missing in the divorce proceedings. In my view that is a more compelling reason why reconstruction should be considered.
6. What is more concerning to me in this matter is a complete silence of the first respondent as to why he failed to provide written reasons. From the papers before me it is not clear as to whether the first respondent was aware of the Court order requiring him to provide written reasons. In the light of the above and the engagement I had with the parties legal representatives in Court, I am of the view that this matter is not ripe for hearing particularly in the absence of both the written reasons of the first respondent and the record.

7. In order to ensure the orderly disposal of this matter and to avoid further delays I intend to make an order which will require the parties to reconstruct the record and for the first respondent to provide written reasons, failing which to state to the Court why he is unable to provide written reasons as per the Court order. The first respondent together with the applicant and the second

respondent will all be required to co-operate in the reconstruction process.

8. Accordingly I make the following order:

8.1 The application is postponed sine die;

8.2 The first respondent is directed to comply with the order of Moseamo AJ dated 18 March 2016 which requires him to provide written reasons for his divorce order;

8.3 The first respondent should comply with the said order within thirty (30) days from the date hereof, failing which the first respondent should state under oath to this Court within 15 days from the date of the lapse of the 30 days referred to above as to why he failed to comply with the order;

8.4 The applicant, first and second respondents are directed within 60 days from the lapse of dies referred to 8.3 above to meet and reconstruct the record and thereafter the applicant failing which any of the respondents may set the matter down for a decision by the Court.

8.5 This order should be served by applicant or through his attorneys or Sheriff on the first respondent by delivering a copy at the Registrar of the North Eastern Divorce Court, Nelspruit as well as at the first respondent's principal place of business at SHAI & MNGOMEZULU ATTORNEYS, 12TH FLOOR BEDFORD CENTRE OFFICE TOWERS, CNR BRADFORD & SMITH ROADS, BEDFORD, GERMISTON NORTH.

8.6 The costs are reserved.

MMP MDALANA- MAYISELA

ACTING JUDGE OF THE HIGH COURT

NORTH GAUTENG DIVISION, PRETORIA

Date of Hearing: 30 April 2018

Date of Judgement: 4 May 2018

Appearances:

Counsel for the Appellant: MR B Van Der Merwe

Attorney for the Appellant: Maile & Associates Attorneys

Counsel for the Respondent: DE Westerbaa

Attorney for the Respondent: MR JM Modiba Attorneys

Source & reproduction note

Judgment wording, source notices and original paragraph numbers are retained. Esheria supplies the layout and this PDF's page numbers; these are not the source pagination. This is a research copy, not an official or certified court document. Check quotations, citations and publication restrictions against the original source before relying on it.

ORIGINAL SOURCE <https://www.saflii.org/za/cases/ZAGPPHC/2018/467.html>

CASE PAGE <https://chat.esheria.ai/case-law/south-africa/snn-v-shai-and-others-unknown-topic-agpphc-2018>

Prepared on 13 October 2026 · Esheria