

SOUTH AFRICA / JUDGMENT

Steinman and Others v NSPCA and Others (Reasons) (CIV APP FC29/2024) [2025] ZANWHC 80 (8 May 2025)

[2025] ZANWHC 80

COURT

North West High Court, Mafikeng

BEFORE

DJAJE, MASIKE, MAODI

CASE / FILE NUMBER

CIV APP FC29/2024

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IN THE HIGH COURT OF SOUTH AFRICA

NORTH WEST DIVISION, MAHIKENG

CASE NO: CIV APP FC29/2024

Reportable: YES / NO

Circulate to Judges: YES / NO

Circulate to Magistrates: YES / NO

Circulate to Regional Magistrates: YES / NO

In the matter between:

STEINMAN JAN DANIELS 1ST APPELLANT JS AFSLAERS BK t/a SWARICO AFSLAERS/
AUCTIONEERS 2ND APPELLANT PIENIKA CC 3RD APPELLANT AND NSPCA 1ST RESPONDENT
WOLHUTER DB 2ND RESPONDENT THE MEC: NORTH WEST DEPARTMENT OF RURAL
ENVIRONMENT AND AGRICULTURAL DEVELOPMENT 3RD RESPONDENT

CIVIL FULL COURT APPEAL

QUORUM: DJAJE DJP; MASIKE AJ & MAODI AJ

REASONS

FOR JUDGMENT

DJAJE DJP

- [1] This was a full court appeal before us on 31 January 2025. On that day the appeal was struck off the roll for non-compliance with the provisions of Rule 49. The appellants have asked for reasons of the order. On the date the matter was heard, both counsel for the appellants and the respondents were engaged on the issues relating to compliance with the provisions of Rule 49 of filing of power of attorney, security for costs and the record of proceedings.
- [2] The record of proceedings is clear on the issues that were ventilated with counsel for the appellants on the issue of non-compliance. The record is available for perusal. It is however just to refer to the authorities relied on for the non-compliance by the appellants.
- [3] Rule 7(2) of the Uniform Rules of Court reads as follows: “The registrar shall not set down any appeal at the instance of an attorney unless such attorney has filed with the registrar a power of attorney authorising him to appeal and such power of attorney shall be filed together with the application for a date of hearing.”
- [4] In the unreported judgment of *Quantibuild (Proprietary) Limited v Ngaka Modiri Molema District Municipality CIV APP FB12/2019* (8 December 2022) at paragraph 14, the court held that “It is an imperative that the Registrar should not set an appeal down on the roll without a power of attorney been filed...”
- [5] The record of proceedings herein clearly indicates that the appellants had not filed a power of attorney as when the appeal was set down for hearing.
- [6] As stated above the appellants had not filed security for costs and Rule 49(13) clearly provides that:
- “(13)
- (a) Unless the respondent waives his or her right to security or the court in granting leave to appeal or subsequently on application to it, has released the appellant wholly or partially from that obligation, the appellant shall, before lodging copies of the record on appeal with the registrar, enter into good and sufficient security for the respondent's costs of appeal.”
- [7] On the issue of whether the matter is properly before us despite non-compliance with the rules of this court, the answer to that is that it remains the prerogative of the appeal court to determine if the matter is properly before it. This was emphasised in the case of *TWK Agricultural Holdings (Pty) Ltd v Hoogveld Boerderybeleggings (Pty) Ltd and Others 2023 (3) A 163 (SCA)* at paragraph 6 as follows “... The fact that leave to appeal has been granted upon application to the President of this court is not decisive of whether a case meets the criteria for special leave. It still remains for us to consider whether we should entertain the appeal at all.”

[8] The appellants' attorneys had to acquaint themselves with the rules pertaining to the prosecution of appeals which in this case was not done. The appeal was therefore not properly before us and was struck off the roll with the appropriate cost order.

J T DJAJE

DEPUTY JUDGE PRESIDENT

NORTH WEST DIVISION OF THE HIGH COURT

I agree

T MASIKE

ACTING JUDGE

J T MAODI

ACTING JUDGE OF THE HIGH COURT

APPEARANCES

DATE OF HEARING

: 31 JANUARY 2025

DATE REQUEST FOR REASONS : 4 FEBRUARY 2025

DATE OF JUDGMENT

: 8 MAY 2025

COUNSEL FOR THE APPELLANT : ADV WIJNBEEK

COUNSEL FOR THE RESPONDENT : ADV BEZUIDENHOUT

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Prepared on 9 October 2026 · Esheria