

SOUTH AFRICA / JUDGMENT

Strydom and Another v Coomans and Others (M533/2021) [2024] ZANWHC 6; 2024 (4) SA 302 (NWM) (8 January 2024)

[2024] ZANWHC 6

COURT

North West High Court, Mafikeng

BEFORE

FMM Reid

CASE / FILE NUMBER

M533/2021

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FLYNOTES: CIVIL PROCEDURE – Judgment – Request for reasons – Detailed reasons already provided in written judgment handed down, yet reasons for judgment requested – Dubious practice developing in division where attorneys request reasons on senseless bases – Adds to ever-increasing workload of judiciary – Attorney not entitled to invoice own client for own frivolous, mindless or thoughtless process – Court’s discretion exercised to deprive attorney of costs – Interest of justice the paramount factor in determination of cost order – Attorney not entitled to invoice client for request for reasons.

IN THE HIGH COURT OF SOUTH AFRICA

NORTH WEST DIVISION, MAHIKENG

CASE NUMBER: M533/2021

Reportable: YES

Circulate to Judges: YES

Circulate to Magistrates: YES

Circulate to Regional Magistrates: YES

2024-01-08

In the matter between:-

STEPHANUS SALAMON STRYDOM 1st Applicant THE INDIVIDUALS MENTIONED IN ANNEXURE
“X” TO THE FOUNDING AFFIDAVIT 2nd Applicant

and

SOLOMON WILLIAM COOMANS 1st Respondent ANDRIES COOMANS 2nd Respondent
SOLOMON WILLIAM COOMANS N.O. 3rd Respondent LOUISA COOMANS N.O. 4th Respondent
GAWIE DU PLESSIS 5th Respondent THE TRUSTEES OF THE ANDRIES DU PLESSIS TRUST (IT
316/2001) 6th Respondent

This judgment is handed down electronically via e-mail to the parties' legal representatives. The date and time of the handing down of the judgment is considered to be 2025-01-08 at 10h00

Summary:

Reasons for judgment requested – detailed reasons already provided in written judgment handed down – attorney not entitled to invoice client for request for reasons.

Cost orders – discretion of court – the interest of justice to be the paramount factor in determination of a cost order.

Cost orders – discretion of court – frivolous and mindless process by legal practitioners – thoughtless litigation by legal practitioners – attorney not entitled to invoice his/her own client for his/her own frivolous, mindless or thoughtless process – court's discretion exercised to deprive attorney of costs.

ORDER

The following order is made:

- i) The reasons for the judgment is contained in the written judgment dated 16 November 2023.
- ii) The applicant's attorney is not entitled to a fee for either the drafting and filing of the request for reasons, the perusal of the reasons given, or any other actions in relation to the request for reasons for the judgment.

REQUEST FOR REASONS

FMM REID J

- [1] On 30 November 2023 the applicants requested reasons for the judgment handed down on 16 November 2023. The aforesaid judgment dismissed the applicant's application for leave to appeal with

costs.

- [2] I received the request for reasons for the judgment on 14 December 2023.

- [3] The judgment handed down on 16 November 2023 is a written judgment and comprises of [9] pages with [13] paragraphs elaborating on the relevant case law, legal principles, specific facts of the matter and my reasoning together with my findings in coming to the conclusion to refuse leave to appeal.

[4] The reasons for the judgment dated 16 November 2023 is contained in the judgment dated 16 November 2023 itself, and it serves no purpose to repeat same here.

[5] I will be acting in derelict of my judicial duties to not elaborate and make a stance on the following. It is concerning that an attorneys' firm requests reasons for a judgment where a written

judgment, which includes the reasons for the judgment and order, has already been handed down. To my mind, this indicates that the attorney did either one of the following:

5.1.

He / she did not bother to read the judgment; or

5.2.

In the event that only the order was received without the judgment, the attorney did not enquire from the Registrar of the Court or the Judges' secretary whether a written judgment has been handed down in order to obtain same.

[6] The request for reasons where reasons have been provided in a written judgment indicates that the request is nothing but a "knee-jerk" reaction by the attorney without applying his / her mind to the matter. When an officer of court acts in legal processes without applying their mind, it not only fails to serve the interest of justice, but actually and factually prejudices his / her own client.

[7] The actual prejudice suffered by the Court and by the litigant, which prejudice is caused by his/her own attorney, is inter alia two pronged:

7.1.

The litigation process becomes protracted and time is wasted in finalisation of the proceedings. The attorney is waiting for the Court to provide reasons and the Court's administrative resources are used in obtaining the court file. All of this takes time. The Court then, having already provided reasons, has to peruse the court documents only to find that reasons have been provided.

7.2.

In all probabilities the litigant will be invoiced by the attorney for the drafting of the request for reasons and the perusal of the reasons so granted.

[8] It has been noticed by this Court that a dubious practice is developing in this Division where attorneys request reasons on senseless bases, for example: where a matter has been removed from the unopposed motion roll on request of both parties or by notice of removal, where matters are postponed by agreement between the parties, or where written judgments have been provided setting out the reasons for the judgment. In my view this amounts to nothing other than mindless or frivolous litigation and, to be blunt, hints at a fee-

generating practice.

- [9] In addition to the injustice alluded to above, the action of an attorney asking reasons where reasons have been provided, adds to the ever increasing workload of the judiciary. The principle that

judicial time is valuable and should not be wasted, has been set out succinctly by the Supreme Court of Appeal in *S v Kruger* 2014 (1) SACR 647 (SCA) paragraph [3] which reads as follows:

“[3] The time of this court is valuable and should be used to hear appeals that are truly deserving of its attention. It is in the interests of the administration of justice that the test set out above should be scrupulously followed.”

- [10] The Court cannot and should never be inactive in the face of an injustice being committed, even if the injustice is committed by an attorney against his/her own client. As expressed a century ago by Lord Chief Justice Heward in *R v Sussex Justices; Ex parte McCarthy* [1924] 1 KB 256, 259 (*R v Sussex Justices*): ‘Justice should not only be done, but should manifestly and undoubtedly be seen to be done.’
- [11] In this instance the Court will act in the interest of justice by setting a measure in place that would prevent an attorney to mindlessly, thoughtlessly or frivolously conduct litigation for its own gain. This measure would be to make an order that the attorney would not be entitled to any fee for either the drafting and filing of the request for reasons or the perusal of the reasons given. It is grossly unfair to expect a lay person to pay his/her attorney for frivolous, thoughtless and/or mindless process conducted by his/her attorney. It follows that this measure is only to be resorted to in the clearest of cases, such as these.
- [12] It is trite law that the court has a wide discretion in the granting, or refusing, of a cost order. The principle has been embedded in our law in *Biowatch Trust v Registrar, Generic Resources and Others* 2009 (6) SA 232 (CC) that the primary consideration in litigation had to be the way in which a cost order would hinder or promote the advancement of justice. This is encapsulated as follows by Sachs J in paragraph [16]:

“[16] In my view it is not correct to begin the enquiry by a characterisation of the parties. Rather, the starting point should be

the nature of the issues. Equal protection under the law requires that costs awards not be dependent on whether the parties

are acting in their own interests or in the public interest. Nor should they be determined by whether the parties are financially well endowed or indigent or, as in the case of many NGOs, reliant on external funding. The primary consideration in constitutional

litigation must be the way in which a costs order would hinder or promote the advancement of constitutional justice.”

[13] An order that precludes a legal practitioner costs for frivolous, mindless and/or thoughtless litigation process, such as in this instance where reasons are requested for a judgment where the reasons are contained in the judgment itself, will motivate legal practitioners to apply their mind to their actions.

[14] In my view this, in turn, will prevent precious judicial time being wasted on responding to a request for reasons where reasons have been provided in the judgment itself.

Order

[15] In the premise, I make the following order:

iii) The applicant's attorney is not entitled to a fee for either the drafting and filing of the request for reasons, the perusal of the reasons given, or any other actions in relation to the request for reasons for the judgment.

FMM REID

JUDGE OF THE HIGH COURT

NORTH WEST DIVISION MAHIKENG

DATE OF REQUEST:

30 NOVEMBER 2023

DATE RECEIVED BY JUDGE: 14 DECEMBER 2023

DATE OF JUDGMENT:

8 JANUARY 2024

FOR APPLICANT

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Prepared on 14 October 2026 · Esheria