

SOUTH AFRICA / JUDGMENT

Tiyali v Walter Sisulu University (154/2010) [2010] ZAECMHC 29 (21 October 2010) [2010] ZAECMHC 29

COURT

Eastern Cape High Court, Mthatha

BEFORE

C Plasket

CASE / FILE NUMBER

154/2010

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Source record**IN THE HIGH COURT OF SOUTH AFRICA
(EASTERN CAPE – MTHATHA)****CASE NO: 154/2010****DATE HEARD: 19/10/10****DATE DELIVERED: 22/10/10****NOT REPORTABLE**

In the matter between:

ZUKO TILAYI

.....APPLICANT

and

WALTER SISULU UNIVERSITY

.....RESPONDENT

The respondent refused to register the applicant as a student of the respondent on the basis that he owed it tuition fees. He paid the outstanding amount but the respondent still refused to register him. In an urgent application to compel the respondent to register the applicant, it was held that the urgency of the matter was not self-created, and so the application should not be dismissed for lack of urgency, and that, as the applicant had paid tuition fees that the respondent claimed he owed, he was entitled to be registered as a student of the respondent. The application succeeded with costs.

JUDGMENT**PLASKET J****[A] INTRODUCTION**

- [1] The papers in this application, brought as a matter of urgency, are a mess: the certificate of urgency does not comply with rule 12(a) of the Joint Rules of Practice of the High Courts of the Eastern Cape Province; the Notice of Motion (which asks that the matter be ‘regarded as one of extreme urgency’!) is littered with typographical errors; the founding affidavit contains no heading or case number; the main answering affidavit is undated (but was apparently deposed to as some stage in February 2010); for some reason various points in limine are not dealt with by the deponent to the answering affidavit but in a separate affidavit deposed to earlier by an attorney; the pleadings in a magistrate’s court trial in which the applicant is the defendant and the respondent is the plaintiff are attached to the papers without these pleadings being identified by any deponent; there is little correlation between the papers and the index, made worse by a particularly poor attempt at paginating the papers; and certain annexures referred to in the papers are not attached.
- [2] There defects indicate in no uncertain terms that the legal representatives of the parties -- particularly the applicant’s -- have failed to do their jobs with that basic level of competence and care that judges are entitled to expect from those who practice in the High Court. This slap-dash approach is simply not good enough and renders the already difficult task of administering justice so much more difficult and more prone to error than it should be.
- [3] The main issue involved is a simple one. The applicant seeks an order directing the respondent (the university) to register him as a student. The university refuses to do so, on the basis, it would seem, that the applicant owes it tuition fees. As will become apparent below, the university’s case is extremely vague and while it does not say that the applicant owes it fees in as many words, it appears to hint that this is so. In addition to this issue, I must also decide whether, as the university argues, the application should be dismissed for lack of urgency. First, however, it is necessary to set out the background.

[B] BACKGROUND

- [4] The applicant was a law student at the university in 2004 when, in June of that year, he was found guilty of theft by a disciplinary committee of the university. There is a factual dispute as to the sanction that was imposed: according to the applicant, he was rusticated from the university for six months and, according to the university, he was fined R500.00. Nothing turns on this dispute of fact because it is not the university’s case that he is still precluded from being a student as a result of his disciplinary infraction.

- [5] In January 2005, the applicant attempted to register again. He was refused registration on the basis that he owed fees for the second semester of 2004. He tried to register again in 2006 but was met with the same response.
- [6] In February 2006 a summons was served on him, in which the university sued him for outstanding fees in the amount of R5 313.02. Through an attorney instructed by him, he entered an appearance to defend, requested further particulars and filed a plea. He then lost contact, he says, with his attorney.
- [7] When he tried to register as a student in 2009, he was again told that he could not be registered because he owed the university fees. He was referred to the university's attorneys. He was told by the attorneys that judgment had been taken against him by default.
- [8] Despite disputing that he owed the university fees, the applicant paid it the amount of R5 640.00 so that he would, he hoped, be able to register as a student for the 2010 academic year. Despite this he was still refused registration and was told that he had to bring the university a letter from its attorneys stating that the debt had been settled. He never did so.
- [9] He also decided to defend the claim against him. He applied successfully for the rescission of the judgment against him, the order being granted on 21 October 2009. He then commenced negotiations to ensure that he was able to register with a Mr Lugebhu and a Mr Gqamane, both officials of the university, while he proceeded to defend the university's action against him.
- [10] He met with Gqamane on 23 November 2009 and again on 10 December 2009 when he was told to return for a meeting on 4 January
2010. Despite these meetings, he was still refused registration. He consequently launched this application on 20 January 2010, stating that registration closed on 27 January 2010.
- [11] As it happened, the matter was postponed a number of times, apparently to allow the university time to prepare and file its papers. It did so on 15 February 2010. Thereafter the matter was again postponed and, on 4 March 2010, was removed from the roll. On 15 April 2010, the applicant applied for a date for the hearing of the matter and on 18 May 2010 the matter was set down for hearing on 19 October 2010, the date on which I heard it.

[C] URGENCY

- [12] It was argued by Mr Melane, who appeared for the university, that the matter should be dismissed for lack of urgency. His argument was that, as the matter dated back to 2004, whatever urgency there may have been in 2010 was self-created.
- [13] I am of the view that there is no merit in this argument. It is true that the applicant attempted to register in 2005, 2006 and 2009. It was only later in 2009 when he paid what the university claimed from him – which he seems to have done on a without prejudice basis – that he was properly in a position to be registered as a student. From then on, he acted with haste, applying for rescission of the default judgment in mid-2009, the order being granted

in October 2009, and engaging in negotiations with officials of the university. It was Gqamane who told the applicant to meet him in early January 2010 and it was in that month, with the deadline for registration looming, that the applicant was still denied admission, even though he had paid what the university claimed from him.

- [14] These facts, in my view, rendered the matter sufficiently urgent for the applicant to invoke rule 6(12) of the uniform rules. When the applicant's conduct in 2009 and early 2010 is viewed in its proper context, it cannot be said that the urgency was self-created.
- [15] In any event, time was afforded to the university to prepare and file papers, the matter was removed from the roll and was set down in the normal course. I presume this happened as a result of the postponements which meant that the applicant, even if successful, could not register for the 2010 academic year. In these circumstances, even if I am wrong in accepting that the applicant's urgency was not self-created, any prejudice to the court, the university or other litigants has been averted by the matter being removed from the roll and set down in the normal course.
- [16] As a result, the university's point that the matter must be dismissed for lack of urgency fails.

[D] THE MERITS

- [17] The university's answering affidavit on the merits was deposed to by its principal and vice-chancellor, Malusi Marcus Balintulo. One is struck immediately by its vagueness and the lack of detail provided by Balintulo.
- [18] Save to say, for instance, that it is the university's practice to refuse to register any student who owes outstanding tuition fees, he is unable to state what the applicant owes the university, how this amount is made up and the precise basis of the debt. One would have expected him to have provided the detail as, surely, the information must be readily available from the university's financial records.
- [19] Balintulo admits, however, that the applicant did, indeed, pay the amount of R5 640.00 which was 'deposited directly to the university's account'. One would have thought that this would have been the end of the matter: after all, the university claimed R5 313.02 from the applicant and he paid it R5 640.00. (Presumably, the second, higher, figure represents the capital owed plus interest to date of payment.) Yet Balintulo persists in a steadfast refusal to register the applicant without ever saying in as many words that the applicant owes the university fees. If Balintulo really believed that the applicant still owed the university fees after having paid R5 640.00, I have no doubt that he would have said so expressly. His failure to say so must be taken as an acceptance of the applicant's averment that he has paid what the university says he owes it.

- [20] Faced with the fact that, on the papers, the applicant had established that he had paid his alleged indebtedness to the university in full, Mr Melane argued that the university still could refuse to register the applicant unless he obtained from the university's attorneys a letter stating that he had paid his outstanding fees.
- [21] Apart from the fact that this cannot possibly be a defence – and is not raised as one on the papers -- it displays a Kafka-esque bureaucratic mindset that has no place in an institution of higher learning. Surely, in the preparation of its papers, the university or its lawyers enquired of the attorneys handling the claim against the applicant if he owed more than he had already paid; and if the answer had been in the affirmative, I am sure that would have been stated by Balintulo in his affidavit. The university must have ascertained that the applicant had paid his indebtedness to it in full or it would have said so and provided details of the shortfall. Consequently, I can accept that the applicant does not owe the university anything and it follows that the application must succeed.
- [22] It remains for me to make three points. First, it is disgraceful – and I use this word deliberately -- that the applicant was denied registration after he had paid what the university said was outstanding. It is also disgraceful that the university should then oppose this application without raising a proper defence on the merits and well-knowing that the applicant no longer owed it fees. Its opposition to the application – clearly without merit from the start – has had the effect of preventing the applicant from pursuing his studies in 2010 as he had planned.
- [23] Secondly, even though the applicant applied for interim relief in the form of a rule nisi, to be followed by a final order on a return day, there is no reason why a final order should not be made.
- [24] Thirdly, while the applicant applied for an order that he be allowed to register for the 2010 academic year, that is obviously not possible but it is not too late for him to register for the 2011 academic year.

[E] THE ORDER

- [25] In the result, the following order is made:
- (a) It is declared that the applicant is eligible to be registered as a student of the respondent for the 2011 academic year.
 - (b) The respondent is directed to register the applicant as a student of the respondent when he applies to be registered.
 - (c) The respondent is directed to pay the applicant's costs of suit.

C. PLASKET

JUDGE OF THE HIGH COURT

APPEARANCES:

For the applicant: Mr S.S. Tilayi of S.S. Tilayi and Associates, Qumbu.

For the respondent: Mr T.H. Melane instructed by T.A. Nkele and Sons, Mthatha.

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