



**IN THE HIGH COURT OF SOUTH AFRICA
(GAUTENG LOCAL DIVISION, JOHANNESBURG)**

- (1) REPORTABLE: NO
(2) OF INTEREST TO OTHER JUDGES: NO
(3) REVISED.

SIGNATURE

DATE: 13 December 2021

Case No: 33546 / 2020

In the matter between:

HAT

Applicant

and

DBT

Respondent

FURTHER CONDUCT RULING

WILSON AJ:

- 1 On 19 October 2021, I gave judgment refusing the applicant's ("Mrs. T's") application for a contribution to the costs of the divorce action, and dismissing the respondent's ("Mr. T's") objection to jurisdiction. I postponed the question of the extent to which Mr. T ought to contribute to the maintenance of the parties' minor children *sine die*. This was to allow the production of further evidence of the cost of maintaining the children in

Greece, which is where they currently reside. I reserved the question of costs.

2 That, I thought, was the end of my participation in the matter. The practice in this division is generally that, once a matter is postponed *sine die*, the parties must apply again to the Office of the Registrar for another hearing before whichever Judge is allocated to hear that particular kind of matter on the hearing date allocated.

3 However, at least initially, the parties did not see it that way. My registrar, Ms. Smit, continued to receive communications from them. On Friday 26 November 2021, Mrs. T's attorney delivered to Ms. Smit the first set of affidavits provided for in my order of 19 October 2021. On 3 December 2021, Mr. T's attorney wrote to Ms. Smit motivating for an extension to the deadline I had set for the delivery of Mr. T's affidavit in response.

4 At this point, it appeared to me that both parties considered that I was still seized with the matter. I asked Ms. Smit to invite both parties to confirm whether they were content for me to consider the application for an extension of time, together with the contents of the parties' affidavits, and to deliver a judgment on the outstanding issues in due course. Mrs. T's attorney conveyed his client's consent to this course of action. In something of a *volte face*, Mr. T's attorney indicated that her client was no longer content for me to determine the outstanding issues, and expressed the view that the matter should be re-enrolled in the ordinary course.

5 Mr. T's attorney also alleged that "it is contrary to the practice in our division for acting judges to retain matters of which they are seized during their

acting appointment, beyond the date of such appointment”. The implication of this was that, my appointment having ended on 17 September 2021, it would have been inappropriate of me to carry on with the matter.

6 Having heard from the parties, I determined that I was, in truth, no longer seized with the matter. I directed that it be re-enrolled in the ordinary way. I indicated that I was, as a result, unable to grant or refuse Mr. T’s application for an extension to the deadline for the filing of his further affidavit.

7 Shortly thereafter, Ms. Smit received a further communication from Mrs. T’s attorney, asking that I reconsider that stance, or, at the very least, seek a directive from the Deputy Judge President of this division governing the further conduct of the matter.

8 In all of these circumstances, it is appropriate that I issue a formal ruling as to the further conduct of the matter, giving my reasons for coming to the conclusion I have.

9 As I have already indicated, the default position is that, when an application is postponed *sine die*, the Judge making that order sends the case back to the Office of the Registrar for re-allocation. But there may be special circumstances that warrant the retention of the matter on that Judge’s roll. These might include the fact that the Judge has assumed supervisory jurisdiction over the case, or that the parties have agreed that the matter should, for reasons of efficiency or convenience, remain with that particular Judge. Neither of those situations applies here. I did not assume supervisory jurisdiction over the matter, and the parties – Mr. T’s apparent equivocation notwithstanding – have not agreed that I should retain the matter on my roll.

10 Mr. T's assertion that acting Judges in this division may not retain matters beyond the period of their appointments appears to me to be contrary to section 48 of the Superior Courts Act 10 of 2013. That provision deems the period of an acting Judge's appointment to extend for so long as that Judge is "necessarily engaged in the disposal of any proceedings in which he or she has participated" as an acting Judge.

11 There is accordingly no general rule that acting Judges must release whatever matters remain on their rolls when their appointments come to an end. The question is really whether section 48 of the Act applies. In this case, I do not think that it does.

12 It is true that, were I to retain the matter, notwithstanding the fact that my period of appointment has now ended, I would be engaged in the disposal of proceedings in which I participated. However, I do not think I would be "necessarily" so engaged.

13 The Act provides that an acting Judge's appointment is only extended where necessary – in other words, where there is some real need for the acting Judge to continue to carry out their judicial functions in relation to the case in question. Apart from the determination of applications for leave to appeal against judgments given on matters heard during their terms (which section 48 addresses explicitly), section 48 has also been held to apply to applications under section 18 (3) of the Act, for the execution of orders pending the determination of appeals against them (see, in this regard *Okuli Security Services CC v City of Cape Town* [2016] ZAWHC 117 (7 September 2016)). In both of these circumstances, there is a real need for an acting

Judge to retain the matter, because the accepted practice (at least in this division) is that applications for leave to appeal and applications for interim execution are heard, where possible, by the Judge who gave the judgment against which an appeal is contemplated.

14 There is plainly no closed list of circumstances under which section 48 might deem an acting Judge's appointment to have been extended. The appointment of acting Judges is intended, in part, to relieve the permanent judiciary of some of its caseload. Section 48 ought to be read to facilitate rather than frustrate that purpose – especially in a division as busy as this one, where the press of judicial business is nothing short of relentless.

15 In this case, though, there is no real need for me to continue to adjudicate the matter. Unlike the practice applicable to applications for leave to appeal and interim execution, there is no general rule in this division that would entail my keeping a matter that I postponed from my Rule 43 roll.

16 Mrs. T's attorney argued that adherence to the normal practice – that the matter be sent back to the Office of the Registrar for re-allocation – will result in a replication of work. The Judge eventually allocated to hear the matter will have to read the whole file again, and familiarise themselves with facts that I have already absorbed. Even assuming that sort of inconvenience renders it “necessary” for me to retain the matter, the Judge who eventually hears the outstanding issues need only consider my judgment of 19 October 2021, and the affidavits filed in response to it. They are, of course, at liberty to familiarise themselves with all the papers, but it is not inevitable that they will, or must, replicate work that I have already done.

- 17 Mrs. T's attorney also bemoaned the additional costs that will now be run up in the enrolment of the matter for a further hearing. But it is far from certain that I would have been able to dispose of the outstanding issues without a further hearing. In addition, the root cause of any further hearing is the failure to adduce evidence that would have allowed me to quantify Mr. T's maintenance obligations in my judgment of 19 October 2021. It is not my refusal to retain the matter on my roll.
- 18 Had the parties agreed that I should retain the matter, then this may have created the kind of necessity that section 48 strikes at. But since there is no such agreement, I need not consider that issue. It does not matter that Mr. T appears to have based his decision on a misguided notion of the applicable rules. He does not agree to my retaining the matter. He need not explain why.
- 19 For all these reasons, I rule that I am no longer seized with the matter. To the extent the issues outstanding require determination at another hearing, the parties are directed to apply to the Office of the Registrar for the enrolment of the matter on this court's Rule 43 roll in the ordinary way.

S D J WILSON
Acting Judge of the High Court

DATE OF RULING: 13 December 2021

For the Applicant: Christophers & Oosthuizen Attorneys

For the Respondent: Deanne Kahn Attorneys