



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

Case No: 2022/12127

REPORTABLE: No
OF INTEREST TO OTHER JUDGES: No
REVISED: NO

07 October 2022 ..

In the matter between:

ZIPHORA MATONE

Applicant

and

CITY OF JOHANNESBURG

First Respondent

CITY MANAGERS AND OTHERS

Second Respondent

LEAVE TO APPEAL: JUDGMENT

Delivered: This judgment was handed down electronically by circulation to the parties' legal representatives by email, and uploaded on caselines electronic platform. The date for hand-down is deemed to be 07 October 2022.

LEAVE TO APPEAL: JUDGEMENT

Molahlehi J

[1] This is an application for leave to appeal against the order of this court made on 31 March 2022, in terms of which the applicant's urgent application was struck off the roll for lack of urgency. The applicant has now instituted this application challenging that decision on several grounds of appeal which she has set out in her notice of leave to appeal. She in that regard contends that the court erred in its decision to refuse her the relief she sought. I do not deem it necessary to repeat the grounds of appeal as they appear on the record. The notice for leave to appeal includes a request for reconsideration of the urgent application.

Reconsideration

[2] The issue of reconsideration in urgent matters is governed by rule 6 (12) (c) of the Uniform Rule of the High Court (the Rules) which provides as follows:

“A person against whom an order was granted in his absence in an urgent application may by notice set down the matter for reconsideration of the order.”

[3] In the present matter it is the respondent that did not attend the hearing and not the applicant. Accordingly, the applicant cannot rely on reconsideration under the above rule. In any case the applicant has not even provided any substantiation as to

why her case deserve reconsideration.

Is the decision of the court appealable?

[4] In my view, this application stands to fail on the basis that the decision of the court in striking the matter off the roll for lack of urgency is not appealable. The approach to adopt when dealing with the issue of whether a case is appealable is set out by the Constitutional Court in *Tshwane City v Afriforum Another*,¹ as follows:

"Unlike before, appealability no longer depends largely on whether the interim order appealed against has final effect or is dispositive of a substantial portion of the relief claimed in the main application. All this is no subsumed under the constitutional interests of justice standard. The overarching role of interests of justice considerations has relativized the final effect of the order or the disposition of the substantial portion of what is pending before the review court in determination appealability."

[5] The essence of the applicant's application in the present matter is that the court ignored the facts and the circumstances of urgency as set out in the application.

[6] The urgent application was brought in terms of rule 6(12) of the Rules which provides as follows:

"(12) (a) In urgent applications the court or a judge may dispense with the forms and service provided for in these Rules and may dispose of such matter at such time and place and in such manner and in accordance with such procedure (which shall as far as practicable be in terms of these Rules) as to it seems

¹ 2016 (2) SA 279 (CC).

meet.

- (b) In every affidavit or petition filed in support of any application under paragraph (a) of this subrule, the applicant shall set forth explicitly the circumstances which he avers render the matter urgent and the reasons why he claims that he could not be afforded substantial redress at a hearing in due course.
- (c) A person against whom an order was granted in his absence in an urgent application may by notice set down the matter for reconsideration of the order.”

[7] In support of the contention that the application deserves to be treated as urgent the applicant made some broad and unsubstantiated allegations about harassment, abuse and “gender based violence by the respondents who occupied a very high positions of authority.” She also complains about unlawful and unfair treatment by the respondent at the workplace.

[8] Furthermore, the applicant alleges in her papers that the respondent withheld her salary and deducted certain amounts from her salary during April 2020. In addition to these allegations the applicant listed various sections of the Constitution which she claims the respondent contravened. She does not however, substantiate in what way the respondent contravened those sections.

[9] It is evident from the applicant’s papers that she deals nowhere with the reasons why she claims that she could not be afforded substantial redress at a hearing in due course. She also does not provide dates of the incidents that lead to her complain. Be that as it may it is clear that the order made by this court is not final

and does not deal with the merits of the applicant's complaints. Her complaints can be addressed if she so wish, in the ordinary course. Having regard to tis it is clear that the interests of justice considerations do not support the proposition that this matter is appealable and accordingly the application stands to fail.

Order

[10] In the premises the applicant's application for leave to appeal is dismissed.

E Molahlehi

JUDGE OF THE HIGH COURT OF
SOUTH AFRICA, GAUTENG
DIVISION, JOHANNESBURG.

Representation:

For the applicant: In person

For the respondents: No appearance

Heard on: 26 September 2022

Delivered: 07 October 2022

