

REPUBLIC OF SOUTH AFRICA



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

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

.....
DATE
SIGNATURE

Case no.: **2021/32089**

In the matter between:

RAUTENHEIMER LISA ANNALEZE

APPLICANT

And

NDLOVU PETER

1ST RESPONDENT

JOHANNESBURG MAGISTRATES COURT

2ND RESPONDENT

THE HONOURABLE MAGISTRATE NTOAMPE

3RD RESPONDENT

MAMELODI SUNDOWNS FOOTBALL CLUB

4TH RESPONDENT

Coram:

Dlamini J

Date of hearing:

01 February 2023 - Open Court (9E)

Date of delivery of Judgment:

02 February 2023

This Judgment is deemed to have been delivered electronically by circulation to the parties' representatives via email and same shall be uploaded onto the caselines system.

JUDGMENT

DLAMINI J

[1] This is an urgent rescission application brought by the applicant against the respondents.

[2] In the Notice of motion, the applicant seeks the following orders;

2.1 That the High Court order dated 05 December 2022 be rescinded and set aside for the following reasons:

- (a) The order was granted in absentia
- (b) Legal Aid had no locus standing in Maintenance Court as the Maintenance Order is in the name of the Applicant, not the children.
- (c) Maintenance inquiries are conducted under the Maintenance Act 99 of 1998

2.2 That this Honourable Court directs that the children be returned to school with immediate effect.

[3] The applicant and the first respondent are parents to two minor girls, whose names, for the sake of their age and privacy will not be disclosed herein.

[4] The applicant is unrepresented and conducted her own case.

[5] The parties have a long acrimonious relationship that resulted in several applications that have been brought against each other relating to the maintenance and education of the minor children.

[6] At the hearing of this matter, this Court was advised that the minor children have not attended school for the past 4 (four) years, due to the disagreement between the parties. The applicant clarified that the notice of motion was incorrect and that she seeks an order to set aside a Magistrate order dated 22 December 2022 (the 22 December 2022) and not a High Court order. There is no such High Court order.

[7] At the hearing of the matter, the respondents raised a point in *limine*, that this Court does not have jurisdiction to hear this application on an urgent basis. I agree.

APPEALS AGAINST ORDERS

[8] Section 25 (1) of the Maintenance Act provides that; *"Any person aggrieved by any order made by a maintenance court under this Act may, within such period and in such manner, as may be prescribed, appeal against such order to the High Court having jurisdiction"*.

[9] Rule 50 of the Superior Court provides that an appeal to the High Court against the decision of a magistrate in a civil matter shall be prosecuted within 60 days after noting of such an appeal.

[10] In this matter, the applicant did not note the appeal at the magistrate court. The applicant just launched this urgent application to appeal and set aside the magistrate's order. This application is impermissible and is not provided for in the Uniform Rules of Court. Accordingly, the first respondent's point in *limine* is upheld and the application is struck off the roll.

[11] Having said the above and in the interest of the minor children, I direct that copies of this judgment be forwarded to the office of the Family Advocate Johannesburg to assist and investigate the leaving conditions of the minor

children and the Legal Aid Johannesburg office to provide legal assistance to the applicant.

In the circumstances of the case, I make the following order

ORDER

The urgent application is struck off the urgent roll with no order as to costs.

DLAMINI J
JUDGE OF THE HIGH COURT OF SOUTH AFRICA
GAUTENG LOCAL DIVISION, JOHANNESBURG

Date of hearing: 01 February 2023

Delivered: 02 February 2023

For the Applicant: Ms Rautenheimer Lisa Annaleze (appearing in person)

For the 1st Respondent: Adv Levin SC

