

REPUBLIC OF SOUTH AFRICA



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

Case Number: 2023-068488

- (1) REPORTABLE: NO
- (2) OF INTEREST TO OTHER JUDGES: YES
- (3) REVISED: YES- 24 JULY 2023

[1] 19/07/2023 _____

In the matter between:

JONGWANA, NDYEBO TREASURE

Applicant

and

VAJETH, RIAZ AMOD

First Respondent

VAJETH, SIBUSISIWE JOY

Second Respondent

SHERIFF, SANDTON SOUTH

Third Respondent

Summary:

Interpretation of section 17(2)(b) of the Superior Courts Act 10 of 2013 – Applicant failed to file notice for leave to appeal – Nothing pending.

This judgment was handed down electronically by circulation to the parties' representatives via e-mail, by being uploaded to CaseLines and by release to SAFLII. The date and time for hand- down is deemed to be 10h00 on 19 July 2023.

JUDGMENT

MUDAU, J:

[1] On 14 July 2023, I made an order in which the application was struck off the roll for want of urgency with costs on attorney and client scale. The following are my reasons.

Background

[2] The matter has its genesis from a judgment by this court dated 28 April 2023 (per Makume J), under case number 19616/2022 whereby the applicant, a practicing attorney or advocate (it is not very clear), was evicted from certain premises situated at 34B Rietfontein Road, Edenburg, Rivonia Sandton (the property) failing which the sheriff was authorised to carry out the eviction. On 26 June 2023, the applicant's application for leave to appeal was dismissed. On 3 July 2023, the registrar of this court issued a writ of execution which the sheriff executed on 12 July 2023.

[3] During the night of 12 July 2023, the applicant issued this application on an *ex parte* basis. This court directed that service be effected on the respondents since the sheriff had carried out a court order and that the exchange of papers should be on 13 July 2023 with the matter set down for 14 July 2023 at 10:00 AM. This was to avoid a situation, an old trick in the book, whereby an applicant steals a match on an opponent in circumstances where the facts dictated there should be proper service and notification of the application.

[4] The first and second respondents duly furnished their opposing papers. The applicant prosecuted this application without replying to the answering affidavit. Accordingly, the *Plascon Evans* rule is applied. From the papers, it is common cause that the applicant had failed to comply with his rental

obligations for at least a year. The defence, *inter alia*, being that he had never been ordered to pay rental by the court and secondly, that the respondents are not entitled to the rental because the leased premises were “illegally erected and not compliant with land development and planning laws of the Republic”.

[5] On the applicant’s version, upon the dismissal of his application for leave to appeal, on 28 June 2023 he advised the respondents’ attorneys of record that he will be petitioning the Supreme Court of Appeal in terms of section 17(2)(b) of the Superior Court Act 10 of 2013 (the Act). The respondents’ attorneys of record duly responded on 12 July 2023, advising that no notice of appeal had been served on their offices nor at the SCA and for that reason, the necessary requirements had not been met.

[6] Section 17(2)(b) of the Act stipulates that:

“If leave to appeal in terms of paragraph (a) is refused, it may be granted by the Supreme Court of Appeal on application filed with the registrar of that court within one month after such refusal, or such longer period as may on good cause be allowed, and the Supreme Court of Appeal may vary any order as to costs made by the judge or judges concerned in refusing leave.”

[7] In argument before this Court on the question of urgency, the applicant contended that not only was the application urgent on the basis that it was a spoliation relief that he sought, but he had “a period of a month within which to file the application for leave to appeal to the Supreme Court of Appeal”.

[8] The interpretation of section 17(2)(b) of the Act by the applicant cannot be correct. The correct interpretation would be a decision becomes the subject of an application for leave to appeal or of an appeal as soon as an application for leave to appeal or a notice of appeal is lodged with the registrar in terms of the rules. In this matter, it is common cause that neither an application for leave to appeal nor a notice of appeal was lodged with the registrar of the SCA.

[9] Section 18(1) of the Act bears mention. It provides that:

“Subject to subsections (2) and (3), and unless the court under exceptional circumstances orders otherwise, the operation and execution of a decision which is the

subject of an application for leave to appeal or of an appeal, is suspended pending the decision of the application or appeal.”

Section 18(2) says:

“Subject to subsection (3), unless the court under exceptional circumstances orders otherwise, the operation and execution of a decision that is an interlocutory order not having the effect of a final judgment, which is the subject of an application for leave to appeal or of an appeal, is not suspended pending the decision of the application or appeal.”

[10] Section 18(5) provides that:

“For the purposes of subsections (1) and (2), a decision becomes the subject of an application for leave to appeal or of an appeal, as soon as an application for leave to appeal or a notice of appeal is lodged with the registrar in terms of the rules”.

[11] An email notification of what the applicant intended to do is not sufficient for relevant court processes. The respondents were entitled in the execution of the writ of eviction. It is for the above reasons that the matter was struck off the roll for want of urgency with an attendant costs order.

Order

[12] The order is confirmed.

T P Mudau
JUDGE OF THE HIGH COURT
JOHANNESBURG

Date of Hearing: 14 July 2023
Date of Judgment: 19 July 2023

APPEARANCES

For the Applicant: Adv. Ndyebo Jongwana
Instructed by: Applicant in person

For the Respondents: Adv A Campbell
Instructed by: Bennett McNaughton Attorneys