



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

**DELETE WHICHEVER IS NOT APPLICABLE**

**(1) REPORTABLE: YES / NO.**

**(2) OF INTEREST TO OTHER JUDGES: YES / NO.**

**(3) REVISED.**

**DATE**

**SIGNATURE**

CASE NO: 21345/2020

DATE: 16-01-2024

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In the matter between

W MOTHULOE

Applicant

and

STANDARD BANK

Respondent

**J U D G M E N T**

**LEAVE TO APPEAL**

20 **KEMACK, AJ**: This is the application for leave to appeal in the application of Standard Bank versus Mothuloe.

The application for leave to appeal was signed and served at the end of March 2023, after judgment had been handed

down, sequestering the respondent on 19 December 2023.

The application for leave to appeal was substantially out of time. There is no application for condonation and no explanation whatsoever before this Court for the delay in delivering the application for leave to appeal.

The matter seems to have gone astray before the appeals registrar and it was only in December 2023 that I was  
10 advised, as an acting judge, that an application for leave to appeal had been delivered. I attempted to expedite matters by having a hearing of this application on 14 December.

On 13 December, the respondent's attorney notified the parties and the court's registrar that Adv Maphutha, as counsel for the respondent, was not available on the 14<sup>th</sup>. As a result, everybody was available on the 14<sup>th</sup>, except the respondent's counsel.

20 The matter was then stood down until 16 January 2024, which is today. Yesterday an email went out from the respondent's attorney to say that her counsel is once again not available.

The Court's registrar had sent an email on 14 December 2023 to the respondent's attorney and had received an

acknowledgment of it. The respondent's attorney must have known about the date of this matter because the respondent's attorney sent the email yesterday, at the very last minute, to say that her counsel was not available today.

The matter has been called today and Ms Acker has appeared as counsel for the Standard Bank, and Mr Claassen has been on record as attorney.

10 Ms Mohanoe has been on record and has appeared as the attorney for the applicant for leave to appeal. Ms Mohanoe joined the proceedings at 12 minutes past 10, even though she knew that they were set down for 10 o' clock. She then sought to have the matter once again postponed.

Ms Mohanoe had difficulty explaining to me when she briefed her absent counsel, Adv Maphutha, but it eventually appeared that this was done as long ago as 14 December 2023. This begs the question of how Adv Maphutha could possibly have  
20 taken another brief in another division, as he is said to have done, knowing that he was on brief for this matter.

Today Ms Mohanoe informed me that she has had great difficulty in obtaining alternative counsel because the matter is *pro bono*. It is not *pro bono*, as she has informed me that

Adv Maphutha is being paid half, approximately, of his normal fee.

This Court is not inclined to postpone the matter for a second time and considers the applicant for leave to appeal's conduct in coming for a second time the day before the hearing, to seek a postponement of the matter to border on contempt of court.

10 I do not simply decline the request for a postponement, without taking into account the fact that there is no application for condonation and without considering the merits of the application for leave to appeal.

The notice of application for leave to appeal runs to eight pages in total. It is quite apparent that it has been compiled by going through the Court's final sequestration judgment, paragraph by paragraph, and stating *ad seriatim* that every point made in the judgment is an error on the part of the  
20 Court.

I have carefully considered the grounds raised for leave to appeal, and I am unable to find any merit in any of them. I do not believe that the applicant for leave to appeal has any prospects of success before a higher court.

Under the circumstances, the only proper order at this stage is to refuse the application for a postponement or a standing down and to dismiss the application for leave to appeal.

The Standard Bank's counsel, Ms Acker, has handed up a draft order requesting costs on the attorney and own client scale. I have questioned this costs order because attorney and own client costs are not an order often granted in our  
10 courts today. Ms Acker, however, has referred me to the loan agreement between the parties in which the applicant for leave to appeal expressly agreed to pay costs on the attorney and own client scale. But for that, my inclination would have been to grant punitive costs on an attorney and client scale, even without an agreement to that effect, because I consider the respondent's conduct to be highly unsatisfactory. In view of the agreement to pay attorney and own client costs, however, that is the order that I intend making.

20 For those reasons, the court's order is as follows.

[1] The matter is not postponed as requested by the applicant for leave to appeal.

[2] An order is granted in terms of the draft order handed up by the Standard Bank, as follows: the respondent's application for leave to appeal the

judgment and order handed down on 19 December 2022 is dismissed with costs on an attorney and own client scale, and which costs shall be costs in the sequestration of the respondent's estate.

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**KEMACK AJ**  
**Acting Judge of the High Court**  
**Gauteng Division, Johannesburg**

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**DATE:** .....