

Reportable: YES / **NO**  
Circulate to Judges: YES / **NO**  
Circulate to Magistrates: YES / **NO**  
Circulate to Regional Magistrates: YES / **NO**



**IN THE HIGH COURT OF SOUTH AFRICA  
(NORTH WEST DIVISION, MAHIKENG)**

**CASE NO: UM185/2022**

In the matter between: -

**SEBATANA CASSIUS SEJAKE**

Applicant

And

**RATLOU LOCAL MUNICIPALITY**

First Respondent

**MUNICIPAL MANAGER**

Second Respondent

**SHERIFF OF THE COURT (ITSOSENG)**

Third Respondent

**ABSA BANK**

Fourth Respondent

**REASONS FOR JUDGMENT**

## **MOAGI AJ**

### **Introduction**

- [1] This is an application in terms of which the Applicant sought to review and set aside the writ of execution and notice of attachment issued by the Registrar in terms of Rule 45(6) and (12) of the Uniforms Rules of the High Court, in favour of the First Respondent under case number: UM185/2022, subsequent to the granting of the order and judgement of Reid J, dated 20 July 2023 (**“Judgement of Reid J”**).
- [2] This matter came before me on 6 October 2023, on an urgent basis and by agreement between the parties, the matter was postponed to 9 October 2023, in order to afford the First and Second Respondents (**“the Municipality”**) an opportunity to file answering affidavit and Applicant to file replying affidavit (if any).
- [3] On 9 October 2023, it was contended on behalf of the Applicant, that there is a pending application for leave to appeal lodged in respect of case number UM185/2022, which axiomatically suspended the operation of the judgement of Reid J. In terms of section 18(1) of the Superior Courts Act 10 of 2013 (**“Superior Court Act”**), the writ of execution and the notice of attachment issued by the Registrar referred to above, ought to be reviewed and set aside.

[4] The Municipality on the other hand contended that, the judgement of Reid J was an interim order pending the finalisation of the rescission application under case number: 255/2021. The application for leave to appeal lodged by the Applicant under case number UM185/2022 did not suspend the judgement of Reid J, as contemplated in section 18(2) of the Superior Courts Act. It follows therefore that the urgent application stood to be dismissed with costs.

[5] In order to determine whether the Applicant was entitled to the relief sought in the notice of motion, the court had to determine:

5.1 whether the Applicant has made out a proper case for urgency, in terms of Rule 6(12) of the Uniform Rules of the High court?

5.2 whether the application for leave to appeal lodged by the Applicant did suspend the judgement of Reid J as contemplated in section 18(1) read with section 18(2) of the Superior Courts Act?

[6] On 9 October 2023, I granted *ex tempore* judgement in favour of the Applicant, in the following terms:

“1. *That: the Rules relating to time and manner of service referred to therein are hereby dispensed with and this matter is dealt with as one of urgency in terms of Rule 6(12) of the Uniform Rules.*

2. ...

3. *That: the writ of execution issued on 27 September 2023 by the Registrar of this Court under case number: UM185/2022 is stayed and suspended pending the application for leave to appeal or appeal.*
4. *That: the notice of attachment in terms of Uniform Rule 45(8) and (12) issued by the third Respondent (Sheriff) pursuant to the writ of execution issued under case number: UM185/2022 on 27 September 2023, is uplifted with immediate effect pending the finalisation of application for leave to appeal or appeal.*
5. *That: to the extent that funds have been disbursed from the Applicant's bank accounts, held with the fourth Respondent, to the third Respondent as a consequence of the notice of attachment in terms of Uniform Rule 45 (8) and (12), or if those funds have already been paid by the third Respondent to the first Respondent or its attorneys, these funds be returned to the Applicant's bank account from which the funds were disbursed.*
6. *That: the parties are directed to desist from issuing any further writs of execution under case number: UM185/2022 pending the finalization of application for leave to appeal or appeal.*
7. *That: the first and second Respondents are ordered to pay the costs occasioned by this application on a party and party scale, jointly and severally, the one paying the other to be absolved.*

[7] The above order mirrored the relief sought by the Applicant in the Notice of Motion save for paragraph 6 and the insertion of the word “*stayed and suspended*” which replaced the word “*reviewed and set aside*” stated in the notice of motion.

[8] The Municipality has requested written reasons for the order I made on 9 October 2023. Below I detail the written reasons as requested.

### **Relevant litigation history of the parties**

[9] The genesis of the dispute between the Applicant and the Municipality may be traced from the default order granted by Hendricks DJP (*as he then was*) under case number 255/2021, dated 20 May 2021 (“**Default judgement**”) and the subsequent judgement of Reid J under case number: UM185/2022.

[10] The effect of the judgement of Reid J should also be read within the context of the judgement of Reid J under case number: M290/2021.

### **Default Judgement**

[11] It is apposite to note that on 19 February 2021, the Applicant instituted action proceedings against the Municipality under case number: 255/2021, for payment of an amount of R 969 827.57 plus interest, for remuneration regarding his promotion to a Senior Manager: Planning and Development.

[12] On 18 May 2021, the Municipality launched a self-review application under case number: M290/2021 to have the Applicant's senior management appointment reviewed and set aside.

[13] On 20 May 2021, under case number 255/2021, Hendricks DJP, granted default order in favour of the Applicant in the following terms:

*“ 1. That: The Defendant be and is hereby ordered to make payment in the amount of **R 969 827.57** (Nine hundred and sixty-nine thousand eight hundred and twenty-seven rands and fifty-seven cents);*

*2. That: Interest tempora morae at the rate of 7% (seven percent) per annum from the date of demand to the date of full and final payment;*

*3. That: Further payments of the Plaintiff's salaries per month in accordance with the appointment from the 30<sup>th</sup> of October 2020 to date of final payment in terms of the appointment.*

[14] On October 2021, the Municipality launched an application to rescind the default order of Hendricks DJP.

[15] Based on the default order of Hendricks DJP, the Applicant caused two (2) writs of execution to be issued against the Municipality:

15.1 on 9 June 2021, in the amount of R 969, 827.57 and

15.2 on 18 January 2022, in the amount of R47, 897.92.

**Judgement of Reid J under case number: UM185/2022**

[16] On 8 September 2022, Petersen J ordered that the application under case number 255/2021 is to be consolidated with application under case number M290/2021, which was enrolled for hearing on 9 February 2023.

[17] On 9 September 2022, the Appicante caused the Registrar to issue the third writ of execution and a notice of attachment in terms of the Uniform Rules of High Court, Rule 4(8) and (12), for his remuneration as a Senior Manager.

[18] On 8 June 2023, Reid J heard the matter between the Municipality (Applicant) and Sejake and two others (Respondents), under case number: UM185/2022, wherein the Municipality sought to review and set aside the writ issued in favour of Sejake, dated 9 September 2022. Further, that the operation and execution of paragraph 3 of the Order by Hendricks DJP, granted by default on 21 May 2022, under case number 255/2021, be suspended, pending judgment in the rescission application, under case number 255/2021.

[19] The judgement of Reid J was handed down simultaneously with the judgement under case number M290/2021 and Reid J at paragraph 26 stated that:

*“...This Court found that the appointment of Sejake to the position of Senior Manager: Planning and Development was irregular and the appointment was reviewed and set aside”.*

[20] Reid J made the following conclusion regarding the matter under UM185/2022:

*“[47] On the common cause facts before the Court, Sejake issued summons for moneys allegedly [owed] to him on the basis that he was not remunerated for the promotion [to] position of Senior Manager: Planning and Development.*

*[48] This summons is issued and delivered to the Municipality in an envelope which has been marked “Sejake”. In the absence of the Municipality opposing the relief sought in the summons, Sejake approaches the Court for a default judgment which he successfully obtains.*

*[49] The summons was issued, and the default judgment obtained, whilst Sejake was aware that the lawfulness/validity of his appointment of Senior Manager: Development and Planning, is disputed by the Municipality. Sejake is aware of the application for review and setting aside of his appointment as Senior Manager: Development and Planning, at the time when he obtained the default judgment.*

*[50] Despite being aware thereof that his position of Senior Manager: Development and Planning is challenged and an application is pending to have his appointment reviewed and set*



*aside, Sejake approached the Sheriff and the Registrar and obtains writs of executions to the excess of R1 200 000.00.*

*[51] On the basis that Sejake was aware that the cause of action of the summons and subsequent default judgment I based on the disputed position of Senior Manager: Development and Planning, I find that the writs were irregularly obtained by Sejake.*

*[52] On this basis, it follows that the applicant is entitled to the relief sought.*

### **ORDER**

*[53] In the premises, I make the following order pending the outcome and finalisation of the application for rescission of the default judgment under case number 255/2021:*

*(i) The following writs of execution issued by the Registrar of this Court, alternatively the Sheriff of this Court, under case number 255/2021, is set aside:*

*(a) On 9 June 2021 in the amount of R969 827.57;*

*(b) On 18 January 2022 in the amount of R647 897.92;*

*(c) On 09 September 2022; of which all of the writs were issued in favour of the first respondent;*

*(ii) That: the notice(s) of attachment in terms of Rule 45(8) and (12) of the Uniform Rules of Court issued by the third respondent (the Sheriff) in favour of the first respondent be set aside and any pending attachment as a result of the notice of attachment be uplifted with immediate effect;*

- (iii) *That, to the extent that funds have been disbursed from the applicant's bank account as held with the second respondent (the FNB Bank), to the third respondent as a consequence of the notice of attachment (Uniform Rule 45(8) and (12)), or if those funds have already been paid by the FNB Bank to the first respondent (Sejake) or his attorneys, these funds be returned to the applicant's bank account from which the funds were disbursed;*
- (iv) *That the operation and execution of the Orders by Hendricks DJP granted by default on 21 May 2022 under case number 255/2021 be suspended pending judgment in the rescission application under case number 255/2021;*
- (v) *The first respondent is ordered to pay the cost of the applicant."*

### **Considerations made and reasons for judgement in casu**

[21] It is common cause that, subsequent to the judgement of Reid J under case number: UM185/2022, the Municipality caused the Registrar to issue a writ of execution under case number: UM185/2022 and attached the Applicant's Absa account, in the amount of R1 969 930.58.

[22] It is the above writ of execution and notice of attachment, which the Applicant sought to review and set aside on an urgent basis.

[23] The Applicant averred in the founding affidavit that, on 5 October 2023, he (the Applicant) attempted to transact on his Absa banking App

(application) and discovered that all his funds were depleted. Upon having made inquiries, he discovered that the sheriff served the notice of a warrant of execution on his brother at his parental home, which he asserts was not brought to his attention.

[24] It was contended on behalf of the Applicant that the writ of execution issued by the Municipality under case number UM185/22 ought to be reviewed and set aside as the judgement of Reid J was axiomatically suspended by the Applicant's application for leave to appeal, under case number UM185/22.

[25] The Court was also informed that the Applicant has lodged application for leave to appeal the Judgement of Reid J under M290/2021, which, according to the Applicant, was consolidated by Petersen J's order dated 8 September 2022, under case 255/2021. It was further contended on behalf of the Applicant that, the judgement of Reid J refers to default order which was granted on 21 May 2022. *De facto*, the judgement of Hendricks DJP was granted on 20 May 2021 under case number 255/2021.

[26] In respect of urgency, it was contended on behalf of the Applicant that this urgent application was launched within a reasonable time after he attempted to engage the Municipality without success.

[27] Further, the Applicant will not be afforded substantial redress in due cause, in that, the monies which were debited from his bank account is part of his monthly salary, which he received for the month of

September 2023. The Applicant detailed in his founding affidavit, monthly obligations which he was not able to meet as his bank account was attached. The status *quo* will recur until this impasse is addressed by this court.

[28] It was argued on behalf of the Municipality that the Applicant is not entitled to the relief sought as the judgement of Reid J is interlocutory and not suspended as contemplated in section 18(1) and 18(2) of the Superior Court Act. The matter was not urgent as the Applicant's substantial redress is in the finalisation of the rescission application.

[29] In order to succeed in this matter, the Applicant was required to establish the jurisdictional requirement of Rule 6(12) of the Uniform Rules of the High Court in respect of urgency and section 18(1) read with section 18(2) of the Superior Court Act. Below, I deal first with jurisdictional requirements of Section 18 (1) and Section 18(2) of the Superior Court Act.

[30] **Section 18 of the Superior Court Act deals with Suspension of decision pending appeal and specifically provides that:**

*(1) 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.*

(2) *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 appeal of an appeal, is not suspended pending the decision of the application or appeal.*

(3) *A court may only order otherwise as contemplated in subsection (1) or (2), if the party who applied to the court to order otherwise, in addition, proves on a balance of probabilities that he or she will suffer irreparable harm if the court does not so order and that the other party will not suffer irreparable harm if the court so orders.”*

[31] **In Zweni v Minister of Law and Order v Minister of Law and Order 1993 (1) SA 523 at 532J-533 A at par [12]** the court set out the guidelines for an order that is final in effect as follows:

*“A ‘judgment or order’ is a decision which as a general principle, has three attributes, first the decision must be final in effect and not susceptible of alteration by the Court of first instance; second, it must be definitive of the rights of the parties; and, third, it must have the effect of disposing of at least substantial portion of the relief claimed in the main proceedings ...”.*

[32] **Corbett J (as he then was) in Cape Corp. Pty Limited v Engineering Management Services Pty Limited 1977 (3) SA 543 (A)**, explained the distinction between an order that is interim/interlocutory or final in nature (at 549 G) in the following terms:

*“In a wide and general sense, the term ‘interlocutory’ refers to all orders by the court, upon matters incidental to the dispute, preparatory to, or during the progress of, the litigation. But orders of this kind are divided into two classes: (i) those which have a final effect on the proceedings; and (ii) those, known as ‘simple (or purely) interlocutory orders’ or ‘interlocutory orders proper’ which do not”.*

[33] The Court explained in **Trade Administration Commission v Scaw South Africa Pty Limited 2012 (4) SA 618 (CC) (at 639F)** that, there are important policy considerations underlying the traditional distinction between the appealability of final orders and the (non) appealability of interlocutory orders; these considerations are the following:

*“Courts are loath to encourage wasteful use of judicial resources and of legal costs by allowing appeals against interim orders that have no final effect and that are susceptible to reconsideration by a court a quo when final relief is determined. Also allowing appeals at an interlocutory stage would lead to piecemeal adjudication and delay the final determination of disputes.” The question of whether the order is final in effect in that it disposes of a substantial portion of the dispute between the litigants, remains relevant in the adjudication of an application for leave to appeal. The Supreme Court of Appeal and the Constitutional Court have explained the application of the interests of justice requirement by reference to considerations of whether the order sought to be appealed against has immediate and substantial effect, including whether the harm that flows from the order may be serious immediate, ongoing and irreparable.”*

[34] In **National Treasury and Others v Opposition to Urban Tolling Alliance** and another (CCT 38/12) [2012] ZACC 18; 2012 (6) SA 223

(CC); 2012 (11) BCLR 1148 (CC) (20 September 2012, the Constitutional Court remarked as follows:

*“[24] It is so that courts are rightly reluctant to hear appeals against interim orders that have no final effect and that in any event are susceptible to reconsideration by a court when the final relief is determined. That, however, is not an inflexible rule. In each case, what best serves the interests of justice dictates whether an appeal against an interim order should be entertained. That accords well with developments in case law dealing with when an appeal against an interim order may be permitted.*

*[25] This Court has granted leave to appeal in relation to interim orders before. It has made it clear that the operative standard is “the interests of justice”. To that end, it must have regard to and weigh carefully all germane circumstances. Whether an interim order has a final effect or disposes of a substantial portion of the relief sought in a pending review is a relevant and important consideration. Yet, it is not the only or always decisive consideration. It is just as important to assess whether the temporary restraining order has an immediate and substantial effect, including whether the harm that flows from it is serious, immediate, ongoing and irreparable”.*

[35] In my view, the judgement of Reid J dealt with the legality of the writ issued by the Registrar in favour of the Applicant and made definitive factual findings in granting the order under case UM185/2022.

[36] Reid J took into consideration the circumstances which contributed to the granting of the default order of Hendricks DJP and the fact that, the

promotional position of the Applicant was irregular. Reid J found that the writ issued under case UM185/2022 was irregularly issued.

[37] Even if it may be argued that the judgement of Reid J is interlocutory in nature, the net effect thereof, entitled the Municipality to issue writ of execution against the Applicant and the Municipality may recover all the monies already executed by the Applicant as a result of the judgement of Hendricks DJP.

[38] Having considered the submission made on behalf of the Applicant and the Municipality including whether the harm that flows from judgement of Reid J is immediate, ongoing and irreparable, in the interest of justice, I deemed it prudent to suspend and stay the execution of the writ of execution pending the finalisation of application for leave to appeal or appeal. The parties were ordered to desist from issuing further writs pending the finalisation of the aforementioned matters.

### **Urgency**

[39] In considering the relief sought. I had to determine whether the application deserves to jump the queue and be heard on an urgent basis.

[40] Rule 6(12) confers a general judicial discretion on a court to hear a matter urgently. When urgency is in dispute, the main enquiry should be to examine whether the applicant would be afforded substantial



redress at a hearing in due course. If the applicant cannot establish prejudice in this sense, the application cannot be urgent.

[41] I considered the implication of the court order of Reid J and the writ of execution of the Municipality pending the finalisation of application for leave to appeal and the application rescission. I was persuaded that the harm suffered and likely to be suffered by Sejake, warranted immediate intervention by this Court.

### **Mis Joinder Non-Joinder**

[42] It was contended on behalf of the Municipality, that the Applicant failed to join FNB, which was cited as a party to a case under UM185/2022. Further, that ABSA has not been formally joined as a party to proceedings.

[43] The test for non-joinder is whether a party has a direct and substantial interests in the subject matter. In **Henri Viljoen (Pty) Ltd v Awerbuch Brothers** 1953 (2) SA 151 (O), Horwitz AJP, with whom Van Blerk J concurred, analysed the concept of “*direct and substantial interest*” and concluded that it refers to an interest in the right which is the subject matter of the litigation and not merely a financial interest.

[44] I held that FNB did not have substantial interest in the matter and dismissed the point *in limine* raised on behalf of the Municipality.

### **Power of attorney**

[45] It was contended on behalf of the Applicant that the Municipality's attorneys of record did not have authority to act on behalf of the Municipality.

[46] After considering the affidavit filed by the Municipality Manager, Lloyd Leoko, I was persuaded that the Municipality's attorneys of record did have the requisite authority to act on behalf of the Municipality.

### **Costs**

[47] The general rule is that costs must follow the result, I awarded the costs against the Municipality.

### **Conclusion**

[48] I was persuaded that the Applicant has made out a case for the relief sought based on the reasons detailed above.

[49] Therefore, it is for the aforementioned consideration and reasons, that I granted the order in paragraph 6 above.

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**M S MOAGI  
ACTIING JUDGE OF THE HIGH COURT  
NORTH WEST HIGH COURT**

**APPEARANCES**

For the Applicant:	Adv CM Muza
Instructed by:	Zisiwe Attorneys Office No.5 Shasons Centre 43 Shippard Street MAHIKENG
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Date Heard:	09 November 2023
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