



THE SUPREME COURT OF APPEAL OF SOUTH AFRICA

JUDGMENT

Not Reportable

Case No: 475/2021

In the matter between:

TSHIOMA MATAMELA

APPELLANT

and

DAVID MASILO MULAUDZI

RESPONDENT

Neutral citation: *Matamela v Mulaudzi* (475/2021) [2022] ZASCA 71 (23 May 2022)

Coram: ZONDI, CARELSE and HUGHES JJA and TSOKA and SAVAGE AJJA

Heard: 16 May 2022

Delivered: 23 May 2022

Summary: Appeal – Section 16(1)(b) of the Superior Courts Act 10 of 2013 – appeal of the decision of the high court sitting as an appeal court – leave to appeal wrongly granted by the full court - special leave of the Supreme Court of Appeal is required – absence of jurisdiction – appeal is struck from the roll.

ORDER

On appeal from: Limpopo Division, Thohoyandou (AML Phatudi J and Makhafola J) sitting as full court of appeal:

The appeal is struck from the roll with costs.

JUDGMENT

Hughes JA (Zondi and Carelse JJA and Tsoka and Savage AJJA concurring)

[1] On 16 May 2022 we granted an order striking the matter off the roll with costs and indicated that the reasons would follow. These are the reasons. The crisp question to be determined in the appeal is whether this Court has jurisdiction to hear this appeal, leave having been granted to this Court by the full court, Limpopo Division, Thohoyandou (the high court).

[2] The origin of the appeal before us emanates from a judgment of the Thohoyandou Magistrate's Court which ordered the eviction of the appellant from the immovable property of the respondent. The appeal against that order served before the high court on 18 September 2020. The high court removed the matter from the roll. On the very same day, following the order of the high court, the appellant filed an application for leave to appeal to this Court. The high court entertained the application for leave to appeal and accordingly granted the appellant leave to appeal to this Court. The appeal before us is thus with the leave of the high court.

[3] Briefly, on the day in question the events evolved as follows before the high court, AML Phatudi J and Makhafola J presiding. At the commencement of the appeal hearing, the court remarked as follows:

‘COURT: I see. I see. Thank you very much. Thank you very much. Right. This is what I am just going to place on record as of now. On the 30th of July 2020 the judge president of this division minuted in a meeting that there is a complaint that the judges of this division have been captured by among others Ramaano Attorneys Incorporated. The complaint is still under investigation. Due to such serious and vicious allegations against the judges of this division this appeal court is still unable to deal with this appeal. In that Anton Ramaano Incorporated, being attorneys of record representing the appellant. Thus we are left with no option but to remove this matter from the roll. The order. The matter is removed from the roll. Pending Anton Ramaano Attorneys attending to this hurdle and there shall be no order as to costs.’

[4] On 25 September 2020, the appellant requested reasons for the order in terms of rule 49(1)(b) of the Uniform Rules of Court and launched an application for leave to appeal the high court’s order. To date no reasons were forthcoming and the application for leave to appeal was heard on 16 March 2021. On 18 March 2021, the high court handed down its judgment granting the appellant leave to appeal its order to this Court.

[5] The judgment of the high court on leave to appeal records that the meeting between the Judge President of the Limpopo Division of the High Court and the judges of Thohoyandou Division, on 30 July 2020, is the catalyst for the situation in which the presiding officers found themselves. In this meeting the Judge President stated that the judicial officers of that court ‘have been captured by Netshipale Attorneys, Advocate Kevin Maluleka, Anton Ramaano Attorneys and SO Ravele Attorneys.’ In light of this statement the presiding judges were of the view that their independence as judges had apparently been placed in question. They acknowledged that by refusing the litigant the right to be represented by an attorney of their own choice, in fact, infringes on the litigant’s right of access to the courts as set out in s 34 of the Constitution of the Republic of South Africa. Thus, in the interest of justice leave to this Court was granted.

[6] I now turn to the proceedings before this Court. On 20 April 2022 and prior to the hearing of this appeal the Registrar of this Court was directed to write the following to the parties:

'This is an appeal against a ruling made by Phatudi and Makhafola JJ, sitting as a court of appeal of the Limpopo Local Division, Thohoyandou against the judgment of the Magistrate's Court in terms of which it granted an order evicting the appellant from certain premises. Thereafter leave to appeal to this Court was sought from, and, granted by Phatudi and Makhafola JJ. In terms of s 16(b) of the Superior Courts Act 10 of 2013 special leave to appeal should have been sought and obtained from this Court against the judgment of the Limpopo Local Division sitting as a full court. In the circumstances, is this appeal properly before this Court? The parties are called upon to furnish an answer by no later than Tuesday, 19 April 2022.'

[7] In compliance with the aforesaid directive, the appellant filed supplementary submissions whilst the respondent filed a letter tendering his response. Apparent from the appellant's supplementary submissions was a request that we exercise our 'inherent jurisdiction' to regulate the proceedings and entertain the appeal in the interest of justice. The respondent, on the other hand, contended that the order of the high court is not appealable. Unfortunately for the appellant, this Court does not have the authority to do so, as is demonstrated below.

[8] In addressing this Court's jurisdiction, it is now trite that this Court does not have inherent jurisdiction to regulate its own proceedings and is circumscribed to exercise such within the limitations of statute. As was aptly pointed out in *Tadvest Industrial (Pty) Ltd v Anthea Hanekom & others (Tadvest Industrial)* at paragraph 8:

'As it was put in *Snyders v De Jager* [2015] ZASCA 137; 2016 (5) SA 218 (SCA) para 8: "First, this court does not have original jurisdiction. Its jurisdiction is determined by the Constitution and by statute. Its inherent power to protect and regulate its own process does not extend to the assumption of jurisdiction not conferred upon it by statute."¹

¹ *Tadvest Industrial (Pty) Ltd v Anthea Hanekom & others* [2019] ZASCA 19; 2019 (5) SA 125. *Tonkin v The State* (938/12) [2013] ZASCA 179; 2014 (1) SACR 583 at para 6(c): 'As to this court's inherent jurisdiction to regulate its own proceedings, it goes without saying that it is to be exercised within the confines of statutory limitations. With regard to appeals against judgments and orders by the high court, the procedure is dictated by s 20(4)(b).'

[9] The relevant section of the Superior Courts Act 10 of 2013 (the Act) which deals with the jurisdiction of this Court to preside over and regulate appeals is s 16 read with s 19 of the Act. This was alluded to by this Court in *Van Wyk v The State* and *Galela v The State*:

'The jurisdiction of this court to hear appeals from the high court whether as a court of first instance, or an appeal court is derived from this section [s 16 of the Superior Courts Act 10 of 2013] and s 19 of the Act. Whereas under s 20(4) of the [the Supreme Court Act 59 of 1959], the special leave of this court was only required in respect of an appeal from a decision of the full court (three judges) given on appeal to it, the special leave of this court is now also required where leave to appeal is sought in respect of a decision of two judges, given on appeal to it.'²

[10] In this instance, s 19, which deals with the powers of the court when hearing appeals, is not relevant. The relevant section is s 16 of the Act which, in its relevant part, provides as follows:

'(1) Subject to section 15(1), the Constitution and any other law-

(a) ...

(b) an appeal against any decision of a Division on appeal to it, lies to the Supreme Court of Appeal upon special leave having been granted by the Supreme Court of Appeal; and

(c) ...

[11] It is clear from s 16(1)(b), that an appeal against a decision of a high court on appeal to it, lies with this Court, upon special leave having been granted. Put differently, a high court which sits as an appeal court, lacks the authority to grant leave to this Court. The jurisdictional fact is that this Court requires that special leave be sought by the litigants for it to entertain such appeal. That much was expressed by this Court in *Tadvest Industrial* where Swain JA said:

'Consequently, because the high court sitting as an appeal court lacks power to grant leave to appeal to the SCA, as special leave of the SCA is required in terms of s 16(1)(b) of the Act...'³

[12] Unfortunately, in these circumstances, the high court lacked the jurisdictional power to grant leave to appeal to this Court, and as such, the order of the high court

² *Van Wyk v The State and Galela v The State* [2014] ZASCA 152; [2014] 4 All SA 708 (SCA) para 19.

³ *Tadvest Industrial* para 11.

is a nullity.⁴ In the result, the high court sitting as a court of appeal could not have granted the order that it did and this Court therefore has no jurisdiction to entertain the appeal.

[13] In argument before us counsel for the appellant was constrained to concede that in the absence of special leave, this Court, does not have jurisdiction to hear this matter. An application for special leave to appeal is necessary because leave is a jurisdictional requirement. With regards to the issue of costs, I am of the view that the respondent is entitled to costs. The respondent was constrained to oppose the appeal in light of the appellant's insistence that leave granted by the high court conferred jurisdiction on this Court to hear the appeal. The respondent is, however, not entitled to costs of two counsel. The matter did not warrant the employment of two counsel.

[13] Accordingly, the appeal is struck from the roll with costs.

W Hughes
Judge of Appeal

⁴ *Newlands Surgical Clinic (Pty) Ltd v Peninsula Eye Clinic (Pty) Ltd* [2015] ZASCA 25; 2015 (4) SA 34 (SCA) para 13; *Snyders v De Jager* [2015] ZASCA 137; 2016 (5) SA 218 (SCA) para 18.

APPEARANCES

For the Appellant:

Adv. M S Ramaite SC

Instructed by:

Anton Ramaano Inc, Thohoyandou
Matsepes Inc, Bloemfontein.

For the Respondent:

Adv. P M Van Ryneveld

Adv. J H F Le Roux

Instructed by:

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