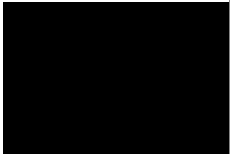




**IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, JOHANNESBURG**

Case No 2022/15337

In the matter between:

DELETE WHICHEVER IS NOT APPLICABLE	
(1)	REPORTABLE: NO
(2)	OF INTEREST TO OTHER JUDGES: NO
(3)	REVISED
	
<u>02 May 2023</u>	_____
DATE	SIGNATURE

MOTLALEKGOMO GOGGY MMOPE

Applicant

and

MADIBENG LOCAL MUNICIPALITY

First Respondent

MADIBENG LOCAL MUNICIPALITY COUNCIL

Second Respondent

**SPEAKER OF THE COUNCIL: MADIBENG LOCAL
MUNICIPALITY**

Third Respondent

**EXECUTIVE MAYOR: MADIBENG LOCAL
MUNICIPALITY**

Fourth Respondent

Neutral Citation: *Motlalekgomo Goggy Mmope v Madibeng Local Municipality and Others* (Case No: 2022/15337) [2023] ZAGPJHC 403 (02 May 2023)

ORDER

The Respondents are ordered to pay the wasted costs of the applicant for the days of 17 and 18 May 2022 in respect of Part A.

JUDGMENT

VICTOR J

Introduction

- [1] On 17 and 18 May 2022 the applicant sought an order interdicting and restraining the first to fourth respondents from implementing the resolution adopted on 4 April 2022 and or continue with the process of the appointment of the Municipal Manger.

- [2] The order was granted and on 18 May 2022 and the costs were reserved with a special directive that the costs for Part A should be argued because of the reprehensible conduct of the respondents. The parties were directed to file heads of argument to deal with the wasted costs.

- [3] Attorney Mr Mphepya on behalf of the applicant filed an affidavit dealing with this since he was fully involved in the proceedings which took place on the 17th and 18th of May 2022.

- [4] At issue here is the conduct of the respondents who made are an array of what ultimately amounted to baseless and reckless allegations against Judge Victor, the Registrar's staff, and the conduct of the applicant's legal team.

Recusal of the judge.

- [5] The respondent sought the recusal of Judge Victor who was seized of the matter because counsel for the applicant had not disclosed that he had served as her law clerk, that the enrolment was irregularly placed before her. Judge Victor's independence was at issue because the matter had been enrolled before her deliberately with an ulterior motive as she would be biased.
- [6] The objective facts are that Counsel for the applicant had served as her law clerk several years before. He had appeared before her on many occasions where he succeeded in some matters and did not in others. Counsel for the respondent had no answer to this except baseless assumptions. Argument on the merits had not commenced yet these allegations of bias were made.

Alleged irregular set down

- [7] A chronology of the events pertaining to the set down are clear as there as the CaseLines programme has an audit trail which is always available to all the parties. The urgent application was issued on 29 April 2022. This is evident from the court stamp. The matter was set to be enrolled on 17 May 2022. The matter was posted on CaseLines on 5 May 2022 pursuant to an invitation by the Registrar Ms Mafologela. The applicant attached a copy of that entry. The hearing showed that the matter would be heard on 17 May 2022. The applicant's deponent invited the respondents' attorney onto CaseLines. The respondents filed answering affidavits on CaseLines and clearly, they had access to the audit trail as well and if they did not know how to use that function, they could have sought the assistance of the Registrar. Instead, they obdurately held their stance until 18 May 2022 when it was necessary to bring the staff from the Registrar's office to demonstrate that the fault was in its office.
- [8] An analysis of the chronology further shows that on Friday 13 May 2022 two urgent court rolls were published. One of the senior registrar's advised the applicant's attorney that the matter would be allocated by the senior judge. Unfortunately, the matter appeared on neither of the Judges rolls on May 16th, 2022. The applicant's attorney sent two emails to the Registrar's office in which

the respondents' attorney was copied in seeking clarification why the matter was not on the Roll.

[9] On the morning of the 17th May 2022 the applicants attorney advised the respondents' attorney that the matter was allocated to Judge Victor's court.

[10] When the matter was called it was clear that the matter had not been placed on the roll through an error in the registrar's office. The failure to enrol was not the fault of the applicant's attorney or for some surreptitious motive.

[11] The respondents' attorney failed to take the trouble to make proper enquiries and simply attacked the process. It was necessary to call the registrar's staff to demonstrate that the error was in the Registrar's office and not a clandestine attempt by the applicant's attorney to bring the matter before Judge Victor or place it on the Roll on an irregular basis.

[12] On 18 May 2022 the respondents' attorney advised that they were abandoning their application for the Judge's recusal. The responders then decided to proceed on the merits but would continue with the irregular enrolment argument. Another court day was wasted dealing with the enrolment issue.

[13] A perfunctory perusal of the CaseLines audit trail would have demonstrated to the respondents that the error was in the Registrar's office. It was necessary to involve the Registrar's in the court process and their time to resolve the issue.

Conclusion

[14] The costs incurred on the 17th and 18th May 2022 were unnecessary and wasted because of the issues raised by the respondents. The respondents submitted arguments that were irresponsible, and it was manifest that the respondents had not even done basic enquiries both on the question of the recusal of the Judge and the alleged irregular set down.

[15] The applicant has sought costs de bonis propriis. In these circumstances, caution must be exercised before ordering costs de bonis propriis. In the *Public Protector* matter, the following was stated:

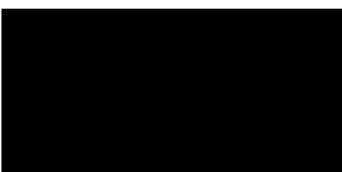
“It is not any deviation from the set norm that results in personal costs orders. To attract such order, the deviation must be reprehensible or egregious or it must constitute a gross disregard for professional responsibilities.”¹

[16] The applicant sought costs against the legal representatives of the respondents and not attorney client costs against the respondents generally. The court is unsure as to what extent the respondents themselves gave the instructions they did.

[17] Although the conduct of the respondents’ legal representatives showed a degree of lack of proper application and preparation on elementary issues such as checking the audit trail, the respondents’ legal representatives have not reached the egregious threshold envisaged by the case law.

Order

1. The Respondents are ordered to pay the wasted costs of the applicant for the days of 17 and 18 May 2022 in respect of Part A.



M VICTOR
JUDGE OF THE HIGH COURT

¹ *Public Protector v Commissioner for The South African Revenue Service And Others* 2022 (1) SA 340 (CC)

Applicant:

Counsel: Adv E Sithole

Instructed by: Mphepya Attorneys

Respondent:

Counsel: Adv O Mokgotho

Instructed by: Malatji & Co Attorneys

Hearing occurred on: 17 May 2022 – 18 May 2022

Judgment delivered: 02 May 2023