

**IN THE HIGH COURT OF SOUTH AFRICA
EASTERN CAPE LOCAL DIVISION, PORT ELIZABETH**

Case number: 3781/15

Date heard: 16/8/16

Date delivered: 1/9/16

Not reportable

In the matter between:

PERPANJAKAM NAIDOO

First Applicant

PERPANJAKAM NAIDOO NO

Second Applicant

SHASHI NAIDOO NO

Third Applicant

PURSOTAM NAIDOO NO

Fourth Applicant

and

**NELSON MANDELA BAY METROPOLITAN
MUNICIPALITY**

First Respondent

**MUNICIPAL MANAGER: NELSON MANDELA
BAY METROPOLITAN MUNICIPALITY**

Second Respondent

**EXECUTIVE MAYOR: NELSON MANDELA
BAY METROPOLITAN MUNICIPALITY**

Third Respondent

Mr T MOTASI

Fourth Respondent

JUDGMENT

Plasket, J:

[1] Part A of the relief sought in the applicants' notice of motion may well be described as novel. They seek an order directing the fourth respondent, Mr T Motasi,

the Director: Legal Services in the first respondent, the Nelson Mandela Bay Metropolitan Municipality (the Metro), to deliver an affidavit in which he is to furnish information specified in the notice of motion, as well as related orders.

[2] It would appear from the fairly terse founding affidavit that the applicants and the second respondent, the Metro's municipal manager, had been involved in an unsuccessful attempt to resolve a dispute between them. An application was then launched by the applicants for an order compelling the Metro, through its municipal manager, to provide the applicants with a copy of the minutes of the council meeting at which the municipal manager was mandated to negotiate with the applicants, or the resolution terminating that mandate. The first, second and third respondents were cited as respondents. Mr Motasi was not a respondent, only being cited as such in this application, which is ancillary to the earlier matter (and bears the same case number).

[3] On 1 December 2015, an order was made by Smith J directing the respondents to furnish the documents sought by the applicants.

[4] The sheriff attempted to serve the order on the municipal manager on 10, 11 and 12 February 2016, but without success. On each occasion he was told that the municipal manager was in a meeting and could not accept service of the order. Another unsuccessful attempt was made on 22 February 2016. On this occasion, however, the sheriff served the order on Mr Motasi, having been informed by him that the municipal manager had instructed him to accept service on the municipal manager's behalf.

[5] As the applicants do not know whether the order was delivered by Mr Motasi to the municipal manager, they do not know if he has knowledge of the order for purposes of contempt of court proceedings. In this application, therefore, they seek an order directing Mr Motasi to divulge what he did with the order served on him on behalf of the municipal manager. In other words, the relief sought now is a prelude to the application for the municipal manager's committal for contempt of Smith J's order.

[6] I have two difficulties with the application. First, Mr Motasi was not a party to the initial application. This application is, as I have said, ancillary to the first application and is intended to provide for the enforcement of the order granted in it. It is, however, directed principally, initially at any rate, at Mr Motasi but the notice of motion does not call on him to file a notice of opposition by a specified date and to file his answering papers, if any, by another specified date. He has, in effect, been joined as a respondent by stealth and no notice of his procedural rights have been given to him, as would have been the case if the long-form notice of motion had been used.

[7] Secondly, the papers were served, in respect of all four respondents, on Ms Ronel Naidoo who is described in the returns of service as an administrative assistant apparently employed by the Metro. She accepted service on behalf of all of the respondents, including Mr Motasi. In a case such as this, in which Mr Motasi is personally required to furnish information, that is not good enough. In my view, nothing short of personal service on Mr Motasi will suffice.

[8] The matter is struck off the roll.

C Plasket

Judge of the High Court

APPEARANCES

For the applicants: JD Le Roux instructed by RJM Attorneys