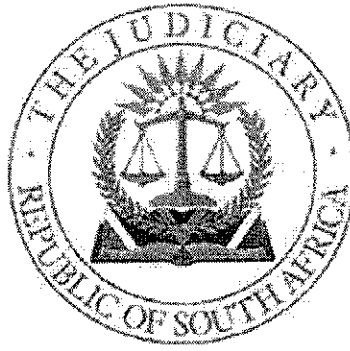




IN THE HIGH COURT OF SOUTH AFRICA
FREE STATE DIVISION, BLOEMFONTEIN

Reportable:	YES/NO
Of Interest to other Judges:	YES/NO
Circulate to Magistrates:	YES/NO

Application no: 5153/2022

In the matter between:

CEPHAS MOTSOARI MOTSOANE

Applicant

and

**CHAIRPERSON THE BOARD
LEGAL AID SOUTH AFRICA**

1st Respondent

**CHIEF EXECUTIVE OFFICER
LEGAL AID SOUTH AFRICA**

2nd Respondent

**CHIEF OPERATIONS OFFICER
LEGAL AID SOUTH AFRICA**

3rd Respondent

**PROVINCIAL MANAGER
LEGAL AID SOUTH AFRICA
FREE STATE PROVINCE**

4th Respondent

**IL DE WET
LEGAL PRACTITIONER
LEGAL AID SOUTH AFRICA
BLOEMFONTEIN JUSTICE CENTRE
FREE STATE PROVINCE**

5th Respondent

AND:

Application no: 3449/2023

In the matter between:

CEPHAS MOTSOARI MOTSOANE

Applicant

and

LEGAL AID SOUTH AFRICA1st Respondent**CHAIRPERSON OF THE BOARD
LEGAL AID SOUTH AFRICA**2nd Respondent**ALL MEMBERS OF THE BOARD
LEGAL AID SOUTH AFRICA**3rd Respondent**MS/MRS MONTITI KOLA
CHIEF EXECUTIVE OFFICER
LEGAL AID SOUTH AFRICA**4th Respondent**CHIEF OPERATIONS OFFICER
LEGAL AID SOUTH AFRICA**5th Respondent**MS/MRS PORTIA THANGAVHUELELO
NATIONAL OPERATIONS OFFICE
LEGAL AID SOUTH AFRICA**6th Respondent**ROVINCIAL MANAGER
LEGAL AID SOUTH AFRICA
GAUTENG PROVINCE**7th Respondent**MS/MRS NCEKAZI MOAHLADI
MANAGER
JOHANNESBURG JUSTICE CENTRE
LEGAL AID SOUTH AFRICA**8th Respondent**ADV. ENRICO GUARNERI
HIGH COURT UNIT MANAGER
LEGAL AID SOUTH AFRICA
JOHANNESBURG**9th Respondent**ADV. MBONGENI MBATHA**10th Respondent

**LEGAL PRACTITIONER
LEGAL AID SOUTH AFRICA**

**MS/MRS ELSE SEBE
LEGAL PRACTITIONER
LEGAL AID SOUTH AFRICA
JOHANNESBURG JUSTICE CENTRE**

11th Respondent

**MR NTAKE
LEGAL PRACTITIONER
LEGAL AID SOUTH AFRICA
JOHANNESBURG JUSTICE CENTRE**

12th Respondent

**PROVINCIAL MANAGER
LEGAL AID SOUTH AFRICA
FREE STATE PROVINCE**

13th Respondent

**MR MACHINI MOTLOUNG
LEGAL PRACTITIONER
LEGAL AID SOUTH AFRICA
BLOEMFONTEIN JUSTICE CENTRE**

14th Respondent

**IL DE WET
LEGAL PRACTITIONER
LEGAL AID SOUTH AFRICA
BLOEMFONTEIN JUSTICE CENTRE
FREE STATE PROVINCE**

15th Respondent

**LEONA SMIT
LEGAL PRACTITIONER
LEGAL AID SOUTH AFRICA
BLOEMFONTEIN JUSTICE CENTRE
FREE STATE PROVINCE**

16th Respondent

AND:

Case no: 1857/2021

In the matter between:

CEPHAS MOTSOARI MOTSOANE

Applicant

and

SOUTH AFRICAN HUMAN RIGHTS COMMISSION

Respondent

CORAM: VAN ZYL, J

HEARD ON: 5 OCTOBER 2023

DELIVERED ON: 18 JANUARY 2024

- [1] The application under application number 5153/2022, served before me on 5 October 2023 in the unopposed Motion Court. The applicant, who is presently incarcerated at Mangaung G4S Private Prison, Bloemfontein, appeared in person. Mr Geyer, employed by Legal Aid South Africa, Bloemfontein Local Office, appeared on behalf of the respondents.
- [2] There are two other applications in which Mr Motsoane is also the applicant, which applications are intertwined with this application, but which were not placed on the roll for 5 October 2023. However, all three files were placed before me prior to the hearing of the application under the application number 5153/2022.

Background to the present application:

[3] The applicant previously issued an application against the National Commissioner of the South African Human Rights Commission under application number 1857/2021 (“the main application”). The application was issued on 21 December 2021. The matter became opposed and both parties filed heads of argument, with the applicant appearing in person. The application eventually served before Opperman, J on 8 March 2022. Opperman J issued the following order:

- “1. The matter is struck from the roll.
2. No order is made as to costs.
3. The matter is referred to Legal Aid South Africa to supply the applicant with legal representation in order for him to prepare [and] promote his case.”

[4] The subsequent application which was issued by the applicant is the present application under application number 5153/2022. The first set of papers herein was issued on 19 October 2022. The second set of papers was issued on 14 December 2022, the third set of papers on 7 March 2023, the fourth set of papers on 5 July 2023 and the fifth set of papers, being the papers which served before me on 5 October 2023, was issued on 22

September 2023. The matter initially served before Reinders, J on 16 March 2023, when she made the following order:

“The matter is removed from the roll.”

- [5] Before the last-mentioned set of papers was issued on 22 September 2023, the matter also served before Mbhele, DJP on 20 July 2023, when she made the following order:

- “1. The matter is struck off the roll.
2. No order as to costs.”

- [6] In the meantime the applicant issued another application on 5 July 2023 under case number 3449/2023. It appears to be an application that Legal Aid South Africa and the further respondents be found guilty of contempt of court due to its failure to have appointed a legal representative for the applicant in accordance with the court order issued by Opperman, J under application number 1857/2021 on 8 March 2022.

- [7] It seems that the last-mentioned application under application number 3449/2023 was set down to be heard by Molitsoane, J on 29 August 2023, as well as application number 1857/2021. The file under the present application number 5153/2022 was seemingly also placed before Molitsoane on the said date when he heard application numbers 1857/2021 and 3449/2023. Be that as it may, during my hearing of the present application under application number 5153/2022 on 5 October 2023, the applicant advised me that both Mbhele, DJP and Molitsoane, J advised the applicant during the respective hearings that served before them that the applications should be consolidated since the

same respondents have been cited in both application numbers 3449/2023 and 5153/2022.

- [8] During the hearing by Molitsoane, J on 29 August 2023, he ordered as follows in both application numbers 1857/2021 and 3449/2023:

- “1. The application is removed from the roll.
2. There is no order as to costs.”

Case Number 5153/2022 which served before me on 5 October 2023:

- [9] As previously indicated, there are a number of sets of application papers which have been filed on different dates under the last mentioned application number. The relevant set of papers which, according to my understanding, served before me is the set which was issued on 22 September 2023 and enrolled for 5 October 2023.

- [10] The main relief sought in the said papers is threefold:

1. Firstly, the applicant is seeking an order for the consolidation of application numbers 5153/2022 and 3449/2023 and also of application numbers 1857/2021 and 5153/2022.
2. Secondly, the applicant is seeking an order that Legal Aid South Africa and the further respondents cited in application number 5153/2022 be found guilty of contempt of court and be compelled to appoint a legal representative for the applicant in accordance

with the order of Opperman, J issued under application number 1857/2021 on 8 March 2022.

3. Thirdly, the applicant is seeking an order that he should not be transferred to a different prison pending the finalization of all the aforesaid applications.

[11] From his oral address during the hearing of the application, I understood the applicant to be saying that initially he was advised that an application that Legal Aid South Africa be found guilty of contempt of court should be issued under a new case number and not under the initial application number 1857/2021. That is why application number 3449/2023 was issued. However, afterwards the applicant was advised that he should have issued the contempt application under the same application number in which Opperman, J made the order regarding legal representation, hence 1857/2021, the main application. He consequently filed such papers on 24 August 2023 under the initial case number of 1857/2021, in which only the South African Human Rights Commission was cited as respondent.

My approach and the reasons therefore:

[12] In my view I have no other option but to follow a robust and practical approach in this matter, as well as the other applications. In the absence of such an approach, the matters are probably time and time again get removed from the roll and the applicant will make no headway with the applications. It is in

the interest of all relevant parties that the litigation be finalised sooner rather than later.

- [13] Although application numbers 1857/2021 and 3449/2023 were not specifically enrolled for 5 October 2023, I deem it essential that they retrospectively be and deemed to be enrolled as such.
- [14] I consider it appropriate that application numbers 5153/2022 and 3449/2023 be consolidated and subsequently be adjudicated simultaneously. I further deem it appropriate that the contempt of court etc part of the main application filed under application number 1857/2021 on 24 August 2022, firstly be separated from the main application and secondly be consolidated with application numbers 5153/2022 and 3449/2023. I will refer to the aforesaid three applications as “***the three applications***”.
- [15] The South African Human Rights Commission (“the Commission”) is not a party to the aforesaid three applications. However, from the relief which is being sought in the separated and consolidated contempt of court etc application filed under application number 1857/2021 on 24 August 2022, it is evident that the Commission may have an interest in the relief which is being sought therein. I therefore deem it essential that the Commission be joined as a respondent to the three applications.
- [16] The remaining part of the main application under application number 1857/2021, will remain a separate application, but I deem it necessary for the main application to datewise run concurrently with the three applications in order for all parties to keep track of all papers filed and developments in the respective

applications, insofar as they would want to do so. The merits of the main application however, will only be adjudicated once the three applications have been finalised and a legal representative has been appointed to assist the applicant therein or when the applicant has delined such legal representation.

Time frames:

- [17] For practical reasons and for the sake of effective litigation, I intend to order time frames within which the parties need to file their respective papers.

Further applications:

- [18] I need to record that I am the duty judge for this week. I have been advised by my registrar that the applicant has filed two further applications to be heard today. However, I wish to state that I have not read the new applications and I do not know what relief is being sought therein, since I do not want the contents of the new applications to have any possible effect on my present judgment. I will read and prepare them later today after I have handed down the present judgment.

Service of the present judgment and order:

- [19] Although Mr Geyer indicated and offered that the local Bloemfontein Legal Aid office will assist with service of the present order and judgment on the applicant, which offer I appreciate, it will no longer be necessary. The applicant has been requisitioned to appear before me today for the two new

applications and I will see to it that my registrar hands a copy of the judgment and the order to the applicant personally in court.

[20] With regard to Legal Aid and the Commission, Mr Geyer and Adv. Modise will be telephonically advised of the proposed delivery of the judgment today, where after the judgment and order will be emailed by my registrar to them. I do, however, request Mr Geyer to email the judgment and order to the other relevant respondents in the employment of Legal Aid South Africa and the Local Bloemfontein Office.

[21] With regard to further service after service of the present judgment and order, the parties are to do so in terms of the Court Rules and/or on the basis of mutual arrangement.

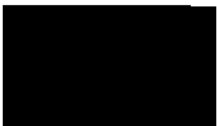
Order:

[22] I consequently make the following orders:

1. The contempt of court etc part of the main application filed under application number 1857/2021 on 24 August 2022, is separated from the main application.
2. The separated part of the main application referred to in paragraph 1 above, application number 5153/2022 and application number 3449/2023 are consolidated and the three applications are subsequently to be adjudicated simultaneously.

3. The South African Commission of Human Rights is joined as a respondent in all three applications referred to in paragraph 2 above.
3. The remaining part of the main application under application number 1857/2021, is to remain a separate application, the merits of which will only be adjudicated once the three applications referred to above have been finalised and a legal representative has been appointed to assist the applicant therein or the applicant has declined such legal representation.
4. The three applications and the remaining part of the main application are postponed to 22 March 2024 at 9h30.
5. The respondents, including the South African Human Rights Commission, are to file their answering affidavits, if any, in the three applications, or in any of the three applications, on or before 9 February 2024.
6. The applicant is to serve his replying affidavits, if any, in the three applications, or in any of the three applications, on or before 4 March 2024.
7. The parties are to file their heads of argument as follows - the applicant on or before 13 March 2024 at 11h00 and the respondents on or before 15 March at 11h00.

8. Apart from the aforesaid affidavits and heads of argument, the parties are prohibited from filing further applications under the aforesaid application numbers.
9. Mr Geyer employed by the Bloemfontein Local Office of Legal Aid South Africa is requested to email this judgment and order to the other relevant respondents in the employment of Legal Aid South Africa and the Bloemfontein Local Office.
10. No order as to costs.


C. VAN ZYL, J

On behalf of the applicant: In person

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On behalf of Legal Aid South Africa and further respondents from Legal Aid:

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Legal Aid South Africa
High Court Civil Legal Practitioner
Bloemfontein Local Office
BLOEMFONTEIN
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On behalf of The South African Commission for Human Rights:

No appearance

Representative:

Mr TJ Modise

BLOEMFONTEIN

Email: TModise@sahrc.org.za