

**IN THE HIGH COURT OF SOUTH AFRICA
(EASTERN CAPE DIVISION – MAKHANDA)**

CASE NO.: 2160/2022

Matter heard on: 02 February 2023

Judgement delivered on: 14 February 2023

(1) REPORTABLE: NO

(2) OF INTEREST TO OTHER JUDGES: NO

(3) REVISED.

In the matter between: -

THE MINISTER OF POLICE

Applicant

and

ANELE MAGWEBU

First Respondent

Z.S. PONOANE & CO.

Second Respondent

THE SHERIFF OF THE COURT, QUEENSTOWN

Third Respondent

JUDGMENT

SMITH J:

[1] The applicant, namely the Minister of Police, brought proceedings for an order, inter alia, declaring unlawful and setting aside a warrant of execution issued by the first defendant on 23 November 2021, as well as the attachment of property and sale in execution held pursuant thereto.

[2] The first respondent is the judgment creditor and had issued the impugned warrant in pursuance of an *allocatur* in respect of taxed costs. The second

respondent is the attorneys firm who represented the first respondent and had issued the impugned warrant. The third respondent is the Sheriff of the Court for the Komani district.

[3] The warrant of execution was issued in the following circumstances. The first respondent instituted civil action against the applicant in the Whittlesea Magistrate Court during 2012. He eventually obtained judgment in the sum of R75 000, with costs. His costs were subsequently taxed in the sum of R138 184.76. Aggrieved by the Taxing Master's decision to allow certain items despite his objection, the applicant took the latter's decision on review. The review was, however, resolved in favour of the first respondent and the Taxing Master's *allocatur* was increased. The applicant thereafter purported to lodge another review application, challenging the same items on the basis of the same factual averments. He was of course not entitled to so since the matter was *res judicata* and his remedy was to appeal the Taxing Master's decision if he remained aggrieved. In argument before me, his legal representatives have correctly conceded that the lodging of the second review application was irregular, has no legal consequences, and the first respondent was consequently entitled to execute on the judgment debt.

[4] The first respondent's attempt to execute on the first warrant of execution was thwarted by the applicant when the latter successfully challenged the validity of that warrant and the resultant attachment and sale of property on the basis that the first respondent had failed to comply with the relevant provisions of the State Liability Act, 20 of 1957 (the Act). As a consequence of that order, the applicant has abandoned the relief in respect of the attachment of state vehicles and the sale in execution. It now only seeks an order that the warrant re-issued on 23 November 2021 be set aside and the respondents pay costs on a punitive scale.

[5] The fact that the validity of the re-issued warrant of execution is the only issue that remains for decision, has implications for the applicant's case against the third respondent. Ms *Sephton*, who appeared on his behalf, has correctly submitted that the former has no interest whatsoever in the resolution of that issue, neither can he add anything that will contribute to the debate regarding validity of the warrant. The

application against the third respondent consequently falls to be dismissed with costs.

[6] The applicant contends that the re-issued warrant of execution falls to be set aside on the grounds that the first respondent has failed to comply with the provisions of the Act and it was issued under the wrong case number.

[7] In terms of section 3 (3) of the Act, a final court order against the department for the payment of money, must be satisfied within 30 days of the date of an order or the time period agreed upon by the judgment creditor and the accounting officer of the relevant department. And in terms of section 3 (4), if the relevant department does not pay within either of the aforementioned time periods, the judgment creditor may serve the court order in terms of the applicable court rules on the accounting officer, the state attorney or another attorney acting on behalf of the department, and the relevant treasury.

[8] The relevant treasury must then ensure that the judgment debt is settled within 14 days of the service on it of the court order or make acceptable arrangements for payment with the judgment creditor, in terms of section 3 (5) of the Act. It is only if the relevant treasury fails to comply with its obligations in terms of the aforementioned sections that the judgment creditor is entitled to issue a warrant of execution in terms of subsection 3 (6) of the Act.

[9] The obligations of the Sheriff and the judgment creditor when executing a warrant are set out in section 3 (7) of the Act. Because I am only concerned here with the validity of the impugned warrant of execution, I am not required to pronounce on the extent to which there has been compliance with that section.

[10] Mr *Madokwe*, who together with Ms *Ntikinca* appeared for the applicant, was constrained to concede that the first respondent has complied with section 3 (4) of the Act. It is also common cause that the treasury did not settle the debt within the time period allowed in terms of subsections 3 (5) and (6) of the Act, entitling the first respondent to re-issue the warrant.

[11] What then remains is the contention that the warrant is invalid because it was issued under the wrong case number. In this regard it is common cause that the re-issued warrant of execution initially bore the incorrect case number i.e. 55/2012, instead of 35/2012. It was, however, subsequently amended to reflect the correct case number. The applicant contends that this mistake vitiated the warrant because no valid judgment or court order existed under that case number.

[12] The discretion to suspend the operation of writs vested in courts in terms of Uniform Court Rule 45A has always been exercised only if there is a material error in the writ, by way of example: where it has not been issued in accordance with the judgment, the incorrect persons have been cited, or the judgment debt had been extinguished. (*Erasmus: Superior Courts Practice, Second Edition*, D1 -604)

[13] To my mind the overly technical argument advanced by the applicant is not sustainable. It is common cause that the warrant reflected the correct details of the parties, the correct citation of the court in which proceedings had taken place, and the correct names and reference numbers of the parties' respective attorneys. The reflection of the incorrect case number was accordingly an inconsequential and bona fide mistake.

[14] Mr *Cole* SC, who appeared for the first respondent, has pointed to several emails in which the applicant's attorneys cite the names of the parties without any reference to the case number. He submitted that it is therefore manifest that the applicant was under no illusions as to which matter the warrant of execution related to and could consequently not have suffered any conceivable prejudice.

[15] I am therefore satisfied that the impugned warrant of execution had been properly issued in compliance with subsections 3 (4), (5) and (6) of the Act. The fact that the warrant initially bore the incorrect case number was a bone fide error, as a consequence of which the applicant did not suffer any prejudice whatsoever. And to my mind, that error was not sufficiently material to vitiate the warrant. The application must therefore fail.

[16] In the result the following order issues:

- a) The application is dismissed.
- b) The applicant is ordered to pay the costs of the first, second and third respondents on the party and party scale.

JE SMITH
JUDGE OF THE HIGH COURT

Appearances:

Counsel for the Applicant	:	Adv. V. Madokwe
:		Adv. L. Ntikinca
	:	N N Dullabh & Co.
		5 Bertram Street
		MAKHANDA
		(Ref.: Mr Wolmarans)
Counsel for the 1 st & 2 nd Respondents	:	Adv. S.H. Cole SC
	:	Mili Attorneys
		100 High Street
		MAKHANDA
		(Ref.: Mr Mili)
Counsel for the 3 rd Respondents	:	Adv. S. Sephton
	:	Neville Borman & Botha
		22 Hill Street
		MAKHANDA
		(Ref.: Justin/Riette)