



**IN THE HIGH COURT OF SOUTH AFRICA
(GAUTENG DIVISION, PRETORIA)**

CASE NO: B5368/2023

In the matter between:

SUSHILLA RAMBALLI

Applicant

and

DELETE WHICHEVER IS NOT APPLICABLE
(1) REPORTABLE: NO
(2) OF INTEREST TO OTHERS JUDGES: NO
(3) REVISED

18 APRIL 2024

RIETVLEI RIDGE HOMEOWNERS ASSOCIATION

Respondent

REASONS FOR ORDER

NGALWANA AJ

[1] On 29 November 2023 I made the following order:

1. The matter is struck from the roll for want of urgency.
2. The Applicant is ordered to pay the costs on a party and party scale.
3. Should the Applicant approach the above Honourable Court or any Court seeking the same relief involving the same parties herein, without legal representation, consideration may be given to awarding costs against the applicant, in the event of her application being struck or dismissed again, on attorney and client scale.

[2] The applicant represented herself. The respondent was represented by counsel.

[3] On 13 December 2023, the applicant filed an affidavit in which she seeks rescission of paragraphs 2 and 3 of the order. She says the rescission is sought because of this court's "*bias and prejudice*" against her. The "*bias and prejudice*" claim seems to be based on the court having announced at the start of the day that cases would be called according to seniority of practitioners, and the court allowing counsel for the respondent to address the court first. There was no bias or prejudice. Ordinarily, cases in opposed motion court are called according to the order in which they appear on the court roll, unless the judge presiding prefers a different approach. Where there are cases to be removed from the roll or to stand down, those are usually called first. Also, it is not unusual for cases to be called according to seniority of counsel. This is not intended to prejudice any litigant, nor does it have such effect, since all cases set down on a continuous opposed motion roll for that week will be heard during that week. As regards the order in which the parties addressed the court, the court considered it convenient and more efficacious for the respondent's counsel to address certain issues of a preliminary nature first so that the applicant could deal with them. Chief among these was the urgency question the significance of which the applicant did not seem to appreciate. For example, she conceded, when asked, that she first learnt of the imminent sale of her car "*before June*" and approached the magistrates court for a stay of execution. Thereafter she sought to appeal against dismissal of that application but had not prosecuted it timeously. Then she approached the high court for several types of relief including rescission and stay of execution, the latter of which served before this court on 29 November 2023. It was important for the court to appreciate the precise sequence of these events and the period over which they occurred in order first to decide the urgency question. The court asked the applicant whether she was amenable to the respondent's counsel addressing the court first, after which she would be given full opportunity to address the court. The applicant agreed.

[4] There was no bias or prejudice.

[5] By 29 January 2024, the applicant was no longer seeking a rescission. She was now an “*appellant*” seeking to appeal against paragraphs 2 and 3 of the order of 29 November 2023. The relief she seeks in her appeal is the substitution of these paragraphs with the following: “*Each party to pay his or its own costs*”. The applicant does not quibble with the order striking the matter from the roll for want of urgency. In her heads of argument dated 29 January 2024, she says “*This issue is no longer a dispute in this application*”. Her “*Notice: Leave to Appeal*” dated 30 November 2023 advances the following as “*ground of appeal*”:

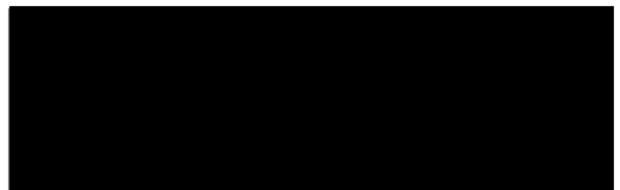
- “1. Paragraphs 2 and 3 contradicts paragraph 1 of the judgment.
 2. Paragraph 3 impedes on the applicant’s constitutional right and therefore the applicant makes a humble request for a detailed written judgment in respect of paragraphs 2 and 3 respectively.
 3. A detailed affidavit to be filed on receipt of the written detailed judgment.”
- (underlining in original text)

[6] The “*detail*” for the orders made was explained to the applicant on 29 November 2023.

[7] While the applicant has gone beyond just seeking reasons for the cost orders in paragraphs 2 and 3, and has now effectively lodged an application for leave to appeal, the court does not consider it proper or efficient to determine an application for leave at this stage. In any event, since the applicant does not challenge the striking of her case from the roll for want of urgency, it is difficult to imagine of what utility an appeal against the costs orders (the second of which has not yet been triggered) would be. What is more, it would be inappropriate to decide a leave to appeal application without submissions from both parties on the issue. Only the applicant has filed heads in this regard. And there is a real risk of the applicant being mulcted in additional costs if her leave to appeal application were to be unsuccessful. So, the court does no more than give reasons for the cost orders as requested by the applicant.

[8] The reasons for the costs orders in paragraphs 2 and 3 of the order of 29 November 2023 were explained. The court took into account that the applicant is a lay person representing herself. But the court also considered that it should not be understood as somehow condoning the exposure of the respondent to the applicant's vexatious court challenges in circumstances where she clearly requires legal assistance but refuses to be legally represented. The court considered that a punitive costs order against the applicant (as sought by the respondent) at this stage would not be appropriate, but that she should be given an incentive to seek *pro bono* legal assistance if she should be minded to pursue a similar challenge against the same party again (as she has shown a propensity to do). After hearing both parties, the court struck the application off the roll for want of urgency with costs on the ordinary scale. Then, as an incentive for the applicant to seek legal representation even from legal aid or *pro bono* as she has been advised on various occasions including by this court, an order was made that if she should approach any court without legal representation for similar relief against the same party, and her application is dismissed or struck from the roll, then the judge hearing and dismissing or striking the matter may consider a punitive costs order against the applicant. The court is aware that another judge is not bound by this order but may consider it in light of the applicant's previous conduct of this application.

[9] It is for these reasons that the court made the orders in paragraphs 2 and 3 of the order of 29 November 2023.



V NGALWANA

ACTING JUDGE OF THE HIGH COURT
GAUTENG DIVISION OF THE HIGH COURT, PRETORIA

Delivered: These reasons were prepared and authored by the Judge whose name is reflected and is handed down electronically by circulation to the Parties/their legal

representatives by email and by uploading it to the electronic file of this matter on CaseLines. The date for hand-down is deemed to be 08 April 2024.

Date heads uploaded: 06 February 2024 (Applicant)

Date of reasons: 08 April 2024

Appearances:

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