

REPUBLIC OF SOUTH AFRICA

IN THE HIGH COURT OF SOUTH AFRICA
LIMPOPO DIVISION, POLOKWANE

CASE NO: 7257/2019

(1)	REPORTABLE: <u>YES/NO</u>
(2)	OF INTEREST/TO THE JUDGES: <u>YES/NO</u>
(3)	REVISED.
DATE <u>12/08/22</u> SIGNATURE: 	

In the matter between:

MATOME JEALOUS MOHALE

PLAINTIFF

And

ROAD ACCIDENT FUND

DEFENDANT

REASONS FOR JUDGEMENT

KGANYAGO J

- [1] On 14th July 2022 at 15h04 a judgment in the abovementioned matter was electronically circulated all the affected parties including Shiviri Manzini Masetla Inc. Shiviri Manzini Masetla Inc are now requesting reasons for judgment alleging that they became aware of the judgment on social media on 9th August 2022. The reasons for judgment appears in the judgment already circulated and I stand by them. In this regard I will supplement the reasons that are already contained in that judgment circulated on 14th July 2022.
- [2] The issue was that Dr Kumbirai does not believe in taking oath was brought by advocate Mojamabu on 18th May 2022 whilst representing the plaintiff under case no 6476/2018. The attorneys of record for the plaintiff was Shiviri Manzini Masetla Inc. In that matter advocate Mojamabu wanted to hand in an affidavit of Dr Kumbirai which was signed but not commissioned. However, since the court had already seen other affidavits deposed by Dr Kumbirai which were signed and commissioned, that was brought to the attention of advocate Mojamabu, and the court refused to admit that affidavit. However, as there were other expert affidavits which were duly signed and commissioned, which could still deal with the issues dealt by Dr Kumbirai, default judgment was granted in favour of the plaintiff.
- [3] It was only on 6th June 2022, when Mr Mphlahlele who was representing the plaintiff in the current matter handed in an affidavit signed and commissioned by Dr Kumbirai, the court saw it prudent to have clarity on the matter since two officers of the court have presented to versions which are mutually destructive of each other. The two versions presented could not be both true, and what was concerning was that it goes into the ethical conduct of the two officers of the

court as it may seem that one may be misleading the court. The only person who may clarify that uncertainty was Dr Kumbirai.

- [4] It was clear that Dr Kumbirai was going to confirm one version, and that version was going to vindicate one counsel whilst condemning the other counsel. For fairness purposes and not do injustice to any of the parties involved, the court was duty bound to call advocate Mojamabu and his instructing attorneys to be present when Dr Kumbirai came to clarify the court about whether he believes in taking oath or not since it was advocate Mojamabu who raised it first. That would have afforded advocate Mojamabu and his instructing attorneys to put any version that might assist the court. They did that by cross examining Dr Kumbirai and also calling their messenger to testify. This does not need a consolidation of case no 6476/2018 and 7257/2019 since 6476/2018 had already been disposed. However, the issue of Dr Kumbirai not taking oath emanates from case no 6476/2018, and the finding of the court under case no 7257/2019 may have adverse findings against the legal practitioner whom his version might be condemned by Dr Kumbirai.

- [5] In *Motswai v RAF*¹ Cachalia JA said:

"Through the authority vested in the courts by s 165(1) of the Constitution judges wield tremendous power. Their findings often have serious repercussions for the persons affected by them. They may vindicate those who have been wronged but they may condemn others. Their judgments may destroy the livelihoods and reputations of those against whom they are directed. It is therefore a power that must be exercised judicially and within the parameters prescribed by law. In this case it required the judge to hold a public hearing so that the interested parties

¹ 2014 (6) SA 360 (SCA) at para 59

were given an opportunity to deal with the issues fully, including allowing them to make all relevant facts available to the court before findings were made against them."

- [6] The proceedings under case number 6476/2018 was the source upon which Dr Kumbirai ended up been called to clarify the court. Even if the proceedings under case number 6476/2018 were finalised, they still remained relevant in the proceedings under case number 7257/2018. Advocate Mojamabu and his instructing attorneys are interested parties whom an adverse finding could be made against them. It would not have been proper to have made that finding without giving them an opportunity to be heard.


KGANYAGO J

JUDGE OF THE HIGH COURT OF SOUTH
AFRICA, LIMPOPO DIVISION,
POLOKWANE

APPEARANCES:

Reasons requested by	: Shiviri Manzini Masetla Inc
Date requested	: 10th August 2022
Electronically circulated	: 12th August 2022