

REPUBLIC OF SOUTH AFRICA



**IN THE HIGH COURT OF SOUTH AFRICA
LIMPOPO DIVISION, POLOKWANE**

CASE NO: 7517/2020

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

In the matter between:

MADIMOLE JULIET PHALADI

APPLICANT

And

POLOKWANE LOCAL MUNICIPALITY

RESPONDENT

JUDGEMENT

KGANYAGO J

- [1] On 25th November 2020 the applicant went to the traffic department Polokwane which is a department within the respondent in order to renew her driver's licence. The officials at the traffic department informed the applicant that they would not process the renewal of her driver's licence as she was having outstanding traffic fines. The said officials referred the applicant to the enquiry desk in relation to those traffic fines as she alleged that she did not know anything about them. According to the applicant, the vehicle in question was driven by her husband advocate Phaladi. At the enquiry desk she found out that she had several traffic fines.
- [2] On confronting her husband about the said traffic fines, her husband told her that those traffic fines were invalid as they did not comply with the provisions of the Criminal Procedure Act (CPA). That led to the applicant instituting an urgent application seeking an order that the respondent be compelled to squash the alleged invalid traffic fines against the applicant, and to immediately process the applicant's application for renewal of her driver's licence.
- [3] The respondent is opposing the applicant's application and has raised three points in limine. The first point in limine is that of lack urgency; the second one is that of non compliance with section 35 of the General Law Amendment Act 62 of 1965; and the third one is that of non compliance with Rule 4 of the Uniform Rules of Court (Rules). The applicant has removed her application from the urgent roll, and that had rendered the respondent's first and second point in limine to be moot.
- [4] The parties have argued the third point in limine. The respondent has argued that the applicant's application was hand delivered at the respondent's premises, and was not served by the sheriff of the court and therefore it was

not properly before court. The respondent submitted that Rule 4 requires that service of any documents initiating application proceedings must be effected by the sheriff of the court. The applicant has submitted that the application was urgent and was served by a practising attorney, who thereafter deposed a certificate of service in the form of an affidavit under oath.

[5] It is common cause that the applicant has initiated her application on urgent basis, and service of the application on the respondent was not effected by the sheriff, but by attorney of record of the applicant. In terms of Rule 4(1)(a), any document initiating application proceedings shall be served by the sheriff in the manner prescribed in that rule. Rule 4(6) relates to the manner in which service of a document shall be proved. Rule 4(6)(b) provides that where service was not effected by the sheriff, nor in terms of subrule (3) or (4), service will be proved by an affidavit of the person who effected that service.

[6] In terms of Rule 4(6)(b) it is clear that it is not only the sheriff who is empowered to serve court documents. Depending on the nature of the proceedings, any person can effect service of a document initiating application proceedings on condition that the said person will depose an affidavit describing his/her position and the manner of service. Even if it was not the sheriff who has effected the service, that service must be in compliance with Rule 4(1)(a).

[7] Rule 6(12)(a) provides that in urgent applications the court or a judge may dispense with the forms and service provided for in the rules. In prayer 1 of the applicant's notice of motion she is seeking condonation for non-compliance with the Rules and dispensing with the form of service by virtue of the urgency of the matter. In terms of the certificate of service, the application was served by Carol Ramahuma who described herself as the legal representative of the

applicant. Carol has also described the manner in which she had effected service, the place and date of service. All these information has been deposed in the form of an affidavit.

[8] In *Eniram (Pty) Ltd v New Woodholme Hotel (Pty) Ltd*¹ it was held that a petitioner seeking reliance on the provisions of Rule 6(12) has to include a reference in his affidavit to the urgency of the matter and to ask the court explicitly to dispense with the requirements demanded of an ordinary notice of motion. In the case at hand, the applicant in her notice of motion has explicitly asked the court to dispense with the forms and service by virtue of the urgency of the application. As I have already pointed out above, in terms of Rule 4(6)(b) service of a court document is not limited to be served by the sheriff only depending on the nature of the matter been instituted. Carol has complied with Rule 4(6)(b) by deposing an affidavit, and she had also complied with Rule 4(1) by describing the manner of service in that affidavit. Under the circumstances, taking into consideration that the applicant has brought an urgent application and has specifically asked the court to dispense with the manner of service of the application, this court is satisfied that there was a proper service of the application on the respondent. The respondent's point in limine stands to fail.

[9] In the result I make the following order

9.1 The respondent's point in limine of non-compliance with Rule 4 of the Rules is dismissed with costs.

KGANYAGO J

¹ 1967(2) SA 491 (E) at 493B

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

APPEARANCES:

Counsel for the applicant	: Adv Phaladi SJ
Instructed by	: NC Ramahuma attorneys
Counsel for the respondent	: Adv Nemukula LC
Instructed by	: Kgatla Inc
Date heard	: 18th August 2021
Delivered electronically on	: 13th September 2021