

In the High Court of South Africa

Gauteng Division, Pretoria

Case No. 46526/2020

In the matter between:-

Blantina Mnisi

Applicant

And

Lamiel Makhubela

1st Respondent

The Master of the High Court

2nd Respondent

Judgment.

As an

LI VorsterAJ:

1.This is an opposed application which started as a n urgent application during September 2020. It was struck from the roll due to lack of urgency. Thereafter it was enrolled again as an opposed motion for 30 November2020. It was struck from the roll again for want of compliance with the practise manual. The applicant was ordered to pay the wasted costs. To this day the Applicant has not complied with the practise manual The result is that as of today the Applicant has not served proper heads of argument listing authorities. What is

before me is the Respondent with a proper practise note and heads of argument.

2.The applicant claims a series of interdicts against the First Respondent which are based on alleged unlawful actions of the First Respondent in connection with the deceased estate of her late husband. The first Respondent denies each and every such allegation.

3.The Applicant did not as it should have done, ask for referral to oral evidence of the various factual disputes so that the matter could be properly tried and decided. The result is that no progress at all has been made to finalise this allegedly urgent application since September 2020.

4. It is trite that opposed application procedure was designed to provide more expeditious ways to decide disputes. Application procedure is much more expeditious than action procedure. It follows inevitably that opposed application procedure is only feasible where all relevant facts are common cause between the parties. Because application procedure is faster litigants have erroneously embarked upon application procedure where relevant facts are in dispute. That gave rise to the well known Plascon Evans decision and many others to follow. The simple truth has not changed: the courts cannot make decisions unless the factual basis of the decision is not in dispute.

5.In the instant case the applicant cannot succeed with any of the prayers in the notice of motion simply because the relevant facts on which the cause of action rests is in dispute.

6. Consequently the application cannot succeed. As far as costs is concerned, the 1st Respondent asks for a punitive costs order. In my view that request has merit. The Applicant since the first appearance of September 2020 never followed the correct procedure as I have indicated, thereby causing unnecessary trouble to 1st Respondent and committing an abuse of process

7 In the result I make the following order:

The application is dismissed with costs on the scale of attorney and client, such costs to include costs which were previously reserved between the parties in this application.


LIVorster AJ

14/4/21

Counsel: 1st Respondent AJ Schoeman.

