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**IN THE HIGH COURT OF SOUTH AFRICA
EASTERN CAPE LOCAL DIVISION : MTHATHA**

CASE NO. 1547/16

In the matter between:

N. E. L.

Applicant

and

**THE SOUTH AFRICAN SOCIAL SECURITY
AGENCY**

Respondent

JUDGMENT

GRIFFITHS, J.:

[1] This is the second application brought by the applicant relating to a social assistance grant for a minor child. Both cases served before me as opposed motions this morning and I have prepared a judgment in first matter. This matter

must, accordingly, be read therewith as the facts are much the same save that this matter relates to her other child.

[2] In this case, the applicant alleges that she was refused a grant for the second minor child because of the fact that the dispute relating to the termination of the other minor child's grant was still in ongoing. In this case however the applicant seeks a declaratory order to the effect that the "respondent's refusal or denial to have the applicant apply or register for a child support grant" be declared unlawful, unconstitutional and invalid. She has also sought ancillary relief in the form of a mandamus directing the respondent to, in effect, allow the applicant to register or apply for the child support grant in respect of her second minor child: S. F..

[3] In essence, the respondent has raised the same form of opposition as in the previous matter, by way of a Rule 6(5)(d)(iii) notice. It is contended, in a nutshell, that the applicant has failed to follow the mandatory steps which an applicant or a social assistance grant recipient who is not satisfied with, or who disagrees with, a decision made by the respondent is obliged in terms of the Social Assistance Act (3 of 2004) to follow. Such steps are an application for reconsideration and, thereafter, an appeal. Neither of these steps appear to have been followed although the applicant did attempt to persuade the Minister, by way of a letter from her attorney, that he should intervene and, in effect, ensure that the proper procedure for an application for such a grant is followed.

[4] The applicant maintained however that this matter does not fall under the Promotion of Administrative Justice Act (No 3 of 2000) as all the applicant is seeking is a declaratory order and, together therewith, a mandamus compelling the functionaries to carry out their duties in terms of the Act. In my view, there

are indeed no internal remedies for the applicant to exhaust in the circumstances.

[5] As I understand the applicant's contentions, she has attended at the relevant office on a number of occasions requesting that she be allowed to make application for a social grant relating to the second child, but that she has on all occasions been frustrated due to the fact that the first child's grant was terminated and, because there has been in existence a dispute relating thereto, she is not able to make application for a grant in respect of the second child. The factual contentions are not contested by the respondent who has not filed an answering affidavit and has contented itself with the filing of the aforesaid notice. Accordingly, I must accept the applicant's contentions as being factually correct.

[6] This being so, it seems to me that the respondent has indeed not carried out its duties pursuant to the Act, and the regulations framed thereunder. In regard to the regulations, regulation 10 sets out the procedure to be followed in an application for a social grant. This includes, *inter alia*, the completion of the relevant application forms in the presence of a designated officer. Furthermore, the agency must assist a person in completing the application form if he or she is, for whatever reason, unable to do so. It seems to me that what the applicant is contending is that these, and various other, obligations resting upon the respondent were not carried out as she was simply told that she could not do anything in view of the dispute relating to the other minor child. This refusal to carry out the duties imposed on it by the respondent through its designated officials, must be unlawful. The only contention apparently made by such officials is that the existence of a dispute relating to the other child bars such an application for the second child. Such an argument has not been pursued by way of an affidavit in these proceedings to explain precisely why such should be the

situation. Indeed, I cannot conceive as to why a grant cannot be pursued relating to a completely independent minor child because its sibling happens to have a dispute with regard to its social grant.

[7] In the circumstances, in my view the applicant has made out a case for the relief sought such being a declaratory order and the mandamus to which I have referred.

[8] In the circumstances, I grant the following orders:

- 1. The respondent's refusal to allow the applicant to apply or register for a child support grant is hereby declared unlawful and invalid;**
- 2. The respondent is ordered to allow the applicant to register or apply for a child support grant in respect of her minor child, S. F.;**
- 3. In doing so, the respondent is directed to comply fully with its obligations in assisting the applicant to make such an application as prescribed in the Social Assistance Act (No 13 of 2004) and the regulations promulgated thereunder;**
- 4. The respondent is ordered to pay the costs of this application.**

R E GRIFFITHS

JUDGE OF THE HIGH COURT

COUNSEL FOR APPLICANT : Mr Matotie
INSTRUCTED BY : SR Mhlawuli & Associates

COUNSEL FOR RESPONDENT : Mr Zilwa Sc
INSTRUCTED BY : State Attorney

HEARD ON : 22 SEPTEMBER 2016
DELIVERED ON : 27 SEPTEMBER 2016