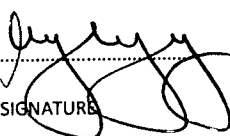




/SG

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

21/5/15
CASE NO: 30761/14

DELETE WHICHEVER IS NOT APPLICABLE	
(1)	REPORTABLE: YES /NO
(2)	OF INTEREST TO OTHERS JUDGES: YES /NO
(3)	REVISED
19/5/15	
DATE	SIGNATURE

In the matter between:

LETETIA LOUISE BOTHA

Applicant

And

MAGISTRATE PL SINGH

1ST Respondent

ROAD ACCIDENT FUND

2ND Respondent

MAGISTRATE W LOUW

3RD Respondent

MINISTER OF JUSTICE &

CONSTITUTIONAL DEVELOPMENT

4TH Respondent

JUDGMENT

KGANYAGO, AJ

- [1] This is an application brought by the applicant seeking an order to compel the first respondent a senior magistrate in the Pretoria Civil Regional Court to allocate a trial date in case number 518/2011. The first, third and fourth respondents are opposing the applicant's application. The second respondent did not enter an appearance to oppose.
- [2] The applicant has instituted an action against the second respondent in the district magistrate court. The action against the second respondent in the district magistrate court was instituted before the Jurisdiction of Regional Courts Amendment Act, 31 of 2008 ("the Regional Court of Act") which empowers regional courts to adjudicate on civil matters came into operation. After the Regional Court Act came into operation, the applicant engaged the services of an actuary to calculate her alleged damages which she might have suffered. After the actuarial report was prepared, it was found that the alleged damages exceeded the jurisdiction of the district magistrate court.
- [3] The applicant amended her particulars of claim and the second respondent did not object. The attorneys for the first and second

respondent consented to the action been transferred from the district magistrate court to the regional court.

- [4] An application was brought before the third respondent seeking an order that the applicant's action be transferred from the district court to the regional court. The third respondent granted the order as prayed for.
- [5] The action was duly transferred to the regional court. However the first respondent informed the parties that the civil regional court did not have jurisdiction to hear their matter and he refused to allocate a date of trial for that matter.
- [6] The applicant initiated an application in the High Court under case no: 63237/2012. The said application was similar to the present one. They obtained a default order which was later rescinded by agreement. However due to some technicalities the application was withdrawn and they brought the fresh application which is presently before this court.
- [7] According to the applicant, section 35(1) of the Magistrate Court Act 32 of 1944 provides that if both parties consent thereto, an action may be transferred from one court to another court. They further submit that as long as the order of the third respondent has not been set aside, the first respondent should comply with it. The respondent contend that the Regional Court Act does not apply retrospectively. They further submit that the decision of the third respondent was not an order as it is not appealable.

- [8] Section 35(1) of the Magistrate Court Act 32 of 1944 (“the Magistrate Court Act”) read as follows:

“ (1) An action or proceedings may, with the consent of all the parties thereto, or upon the application of any party thereto, and upon its being made to appear that the trial of such action or proceeding in the court wherein summons has been issued may result in undue expense or inconvenience to such party, be transferred by the court to any other court. ”

- [9] The section does not specify which court must the parties transfer their action or proceedings, but refers to any other court. In my view any other court may include a magistrate court, regional court or high court. What is important is all the parties must consent or any other party to the action or proceeding may bring an application for such purpose.

- [10] In this case it is not in dispute that all the parties have consented to the transfer of the applicant’s action from the Magistrate Court to the Regional Court.

- [11] Even though all the parties have consented to the transfer of the applicant’s action from the Magistrate Court to the Regional Court, the applicant brought an application by way of notice of motion seeking the following orders:

“ 1. *Dat die askie order saak nommer 90485/2009 na die streekhof oorgeplaas word in terme van Artikel 35 van die*

wet op Landroshoww, 32 van 1944,

2. *Dat die koste van die aansoek deur die Respondent betaal word, slegs in geval van opponering.”*

[12] It is clear that the applicant has brought a formal application by way of notice of motion seeking an order that the applicant's action be transferred from the Magistrate Court to the Regional Court. After hearing the applicant's application, the third respondent gave the following order:-

“ aansoek toegestaan. ”

[13] It is clear that the third respondent has granted an order as prayed for by the applicant's legal representative. That in my view was a valid order. Therefore the submission by the respondent's counsel that the decision of the third respondent to transfer the action of the applicant from the magistrate court to the regional court was not an order has no merit.

[14] The respondent's counsel has conceded that the order of the third respondent has not been set aside. An order of a court of law stand until set aside by a court of competent jurisdiction. Until that is done the court order must be obeyed even if it is wrong or you dislike it. **In Gauteng Province Driving School Association and Others v Amaryllis Investments (Pty) Ltd and others [2012] All SA 290 (SCA)** the court held that respect for authority of the courts is foundational to the rule of

law. See also **Bezuidenhout v Patensie Sitrus Beherend BPK 2001 (2) SA 224 (E)**.

- [15] It is of paramount importance that orders of the court are respected and compiled with. As an officer of the court the first respondent should be an exemplary. Disobedience of court orders by judicial officers will make a mockery of the courts. As a regional court magistrate, in my view he is expected to know what procedure to follow if he is of the view that the order made is not capable of been enforced, rather than a blatant refusal to carry out the order.
- [16] In my view the first respondent is acting as if he is a court of competent jurisdiction empowered to review the order of the third respondent. He is exercising powers which he does not have. He is compelled to obey the order of the third respondent since that order has been properly obtained and will remain valid until set aside by a court of competent jurisdiction. It is not his terrain to determine whether the order is wrong or not, and thereafter out of his own and without following the correct procedures, refuse to enforce the order.
- [17] At this stage it not necessary to determine whether the Regional Court Act apply retrospectively or not since this is not an appeal or review of the order of third respondent.
- [18] Under the circumstances, I am satisfied that the third respondent has

made a valid order which was never set aside. As long as that order has not been set aside, the first respondent is compelled to respect and enforce it whether he agrees with it or not.

[19] In the result I make the following order:

19.1. That the first respondent is ordered to allocate a trial date under Pretoria Civil Regional Court case number 518/2011 within 60 days of this order.

19.2. The first, third and fourth respondents to pay the applicant's costs jointly and severally, the one paying the other to be absolved.


M F KGANYAGO
ACTING JUDGE OF THE GAUTENG DIVISION, PRETORIA

Heard on: 29th April 2015

For the Applicant: Adv

Instructed by:

For the Respondents: Adv

Instructed by:

Date of Judgment: