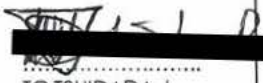




**IN THE HIGH COURT OF SOUTH AFRICA
LIMPOPO LOCAL DIVISION, POLOKWANE**

DELETE WHICHEVER IS NOT APPLICABLE	
(1)	REPORTABLE: YES / ☒ NO
(2)	OF INTEREST TO OTHER JUDGES: ☒ YES / ☒ NO
(3)	REVISED. 13/7/2024 DATE
	 TC TSHIDADA J

CASE NO: REV/76/2024

In the matter between:

CHARMAINE MOKGOMOLE

Plaintiff

and

LYDIA SEKWELA

Defendant

REVIEW JUDGMENT

TSHIDADA J.

[1] The plaintiff initiated and launched an action proceeding at Tzaneen Regional Magistrates Court sitting as a circuit court in

Lenyenye for damages arising from the injuries sustained by her minor child caused by defendant's dog bite. This is an action commonly referred to as *actio de pauperie* or a lawsuit against a dog owner/handler and/or any animal alleged to have caused damage, physical or otherwise to another person.

[2] Regional Court Magistrate, Ms CT Honwana presided over the above referred trial matter. Both parties were legally represented up to a stage when the presiding officer had to suspend the proceedings pending the outcome of the current special review which she commissioned per her referral letter attached to the trial record hereof.

[3] It is indicated and recorded that at a certain point during the course of the trial, the defendant launched an application seeking the court to conduct an inspection *in loco* of the place where the incident in question occurred. The application was accordingly granted. Court was then adjourned, the presiding officer, the parties and necessary court officials were all escorted by the court orderlies (SAPS) to the alleged scene to inspect the setup of the

area and possible measurements of distances from one point to the other.

[4] Upon return and resumption of the court proceedings, the defendant's counsel took the lead and immediately launched an application for recusal of the presiding Magistrate from presiding over the trial.

[5] The basis and grounds for the application were apparently premised on the remarks allegedly made by the presiding officer shortly before the inspection was conducted at the premises where the dog bite allegedly occurred, which remarks according to the defendant caused her to apprehend a perception that the presiding officer might not be objective and impartial and likely to be biased if she were to continue presiding over the pending trial.

[6] The presiding officer is alleged to have made the following remarks (*sic*):

[6.1] *whether the dogs at the premises to be inspected will impose any danger without provocation.*

[6.2] *further publicly remarked that she had once been bitten by her own dog before.*

[7] Defendant's counsel submitted that the pending trial related to a minor child who was bitten by a dog and that their defense rested on provocation of the dogs before the child was bitten and that comments made by the presiding officer were sensitive and had a close correlation to the main issue to be determined by the trial court, a reason which triggered the defendant to apprehend a possibility of subjectivity and partiality on the part of the presiding officer, largely on a suspicion of her similar and previous experience of her own dog bite.

[8] Defendant's insinuation on the presiding officer was that, having regard to her earlier remarks, defendant is likely and presumably to be subjected to an unfair trial and prejudice if the Magistrate was not to recuse herself.

[9] Section 34 of the Constitution¹ of the Republic of South Africa guarantees everyone of a right to have any dispute that can be resolved by application of the law, decided in a fair public hearing before a court or where appropriate, another independent and impartial tribunal or forum.

[10] Courts are therefore required to apply the law equally, impartially and without fear, favour and/or prejudice. Presiding officers are required to uphold and protect the Constitution and the Rule of Law in the process of administering and discharging justice to all citizens/litigants before them who seek justice through our courts of law, without subjecting themselves to any possible conflict of interest there might be in any litigation proceedings they are ceased with.

[11] Confronted with the reasons for her recusal, the presiding officer endeavored to contextually clarify her contended remarks and stated the following, that indeed upon their arrival at the premises

¹ Act 108 of 1996

to be inspected, she admitted to have had an open informal chat with the court interpreter of her previous experience of being bitten by her own dog. She further stated on record that shortly before they could commence with an inspection a young man emerged from the premises and she openly asked him if the dogs which she had observed close to the gate where they were to enter through were chained for the safety of everyone who was there for purposes of conducting the inspection.

[12] The presiding officer indicated that at no stage did she elaborate the circumstances under which her own dog ended up biting her because it was of no consequence to the matter before her. Secondly, that the sole reason why she asked if the dogs will not impose danger unprovoked and/or whether the dogs at the premises were chained or not was merely a safety precaution she decided to enquire about for the safety of everyone present outside before entering the premises without any attribution whatsoever to the trial before her.

[13] She stated her previous encounter and experience of her own dog bite would not have influenced her finding and decision in anyway, neither did she intend to use it as her guiding reference to the finding on the trial before her.

[14] Beset with the application, she ultimately recused herself from the main trial, however as a cautionary measure towards uncertainty of her ruling, she ordered that the matter be referred to the court for a review.

[15] The issue to be reviewed and determined by this court is to establish and find whether the remarks or comments made by the presiding officer at the inspection and complained of by the defendant were inappropriate to a reasonable, objective and informed person to reasonably apprehend and assume that the presiding officer has or will not bring an impartial mind to bear on the adjudication of the case, that is a mind open to persuasion by the evidence and the submissions to be made by counsel. See in this regard ***President of the Republic of South Africa and***

Another v South African Rugby Football Union and Others²
and/or whether the apprehension itself was in the circumstances
reasonable as per Cameron J's dictum in ***South African
Commercial Catering and Allied Workers Union v Erwin and
Johnson Limited Seafoods Division Fish Processing***³.

[16] The test and consideration referred to the authorities *supra* must be sufficiently demonstrated and satisfied against a presiding officer by the applicant before contemplating that justice will not be served, should the presiding officer continue to preside over the matter under the circumstances that justify his/her recusal.

[17] It is inconceivable to perceive that the afore-stated remarks allegedly made by the presiding officer, in particular her previous experience of her own dog bite could presumable influence her to find against the defendant before outside and without considering the evidence that would have been presented before court.

² (CCT16/98) [1999] ZACC 11

³ (CCT2/00) [2000] ZACC 10

[18] Defendant failed to place sufficient and reasonable facts in support of her apprehension of possible biasness on the presiding officer to suggest that even before hearing evidence *in casu*, the officer harbors a grudge against any dog owner and that she was so disgruntled to the extent that she desired to punish any dog owner whose dog may have been found to have bitten someone for she sought to satisfy or avenge her previous experience on the defendant.

[19] The afore-going imputation if anything in my view, would make no realistic sense. I would not imagine any presiding officer who fully comprehends and understands the duties and responsibilities entrusted on judicial officers by the Constitution if he/she would allow to be guided and influenced by ones' own personal experiences before pronouncing any ruling or judgment in a matter. Ordinarily every human being would have or had one or more bad personal experience/s in the daily course of our lives like the presiding officer in this regard which do not necessarily and cannot be presumed to influence ones' future decisions.

[20] It is my considered view that the apprehension of bias based on the remarks herein was unreasonable and premature, because the defendant has not even allowed the presiding officer an opportunity to continue handle and manage the proceedings before she was suspected of potential bias. Nothing prevented the defendant from allowing the trial to proceed and await any untoward behavior or unsavory management of the trial before rushing to abort the trial when no wrongdoing has ensued or demonstrated by the court.

[21] It was equally undesirable for the presiding officer to recuse herself from the trial on the basis of defendant's unsubstituted grounds for recusal.

[22] It is therefore my conclusion that the defendant failed to make out a case based on reasonable apprehension of bias justifying recusal by the presiding officer ceased with the matter.

[23] Therefore, the presiding officer's decision to recuse herself from the matter over the impugned remarks was unjustified and stands to be reviewed and set-aside. Recusal application are not to be loosely granted on unfounded reasons simply because such retort may result into travesty and inordinate delay in the administration of justice within a reasonable and speedy manner.

[24] In light of the afore-going, I make the following order.

[24.1] The recusal order granted by the presiding officer *a quo* on 23 March 2023 is hereby reviewed and set-aside.

[24.2] The above-stated recusal order is substituted with the following order;

[24.1.1] that Regional Court Magistrate one Ms. CT Honwana is hereby ordered to re-enrol and notify both parties when their pending trial referred to herein shall proceed at Tzaneen Regional Magistrates Court, sitting as a

circuit court in Lenyenye with immediate effect.


[REDACTED]
T.C. TSHIDADA
JUDGE OF THE HIGH COURT
LIMPOPO DIVISION, POLOKWANE

I agree


[REDACTED]
N GAISA
ACTING JUDGE OF THE HIGH COURT
LIMPOPO DIVISION, POLOKWANE