

IN THE HIGH COURT OF SOUTH AFRICA

GAUTENG LOCAL DIVISION, JOHANNESBURG

CASE NO: 082843/2024

DATE: 14-08-2024

DELETE WHICHEVER IS NOT APPLICABLE

(1) REPORTABLE: NO.

(2) OF INTEREST TO OTHER JUDGES: NO.

(3) REVISED.

DATE 20 September 2024

SIGNATURE

10 In the matter between

SB NGENTO ATTORNEYS

Applicant

and

DORIS MBIZA OBO MULISA MBIZA

Respondents

J U D G M E N T

YACOOB, J: The First Respondent in this application obtained an order on an urgent, *ex parte* basis on 31 July 2024 from this Court, which froze the bank accounts of the Applicant today before me. Specifically, the order froze the trust account of the Second Applicant which was identified by its account number. The order also stated that any account in the name of the First and Second Respondents are to be frozen pending the finalisation of the matter.

The First and Second Applicants have now approached this Court for a reconsideration of the order as is their right. However, it must be noted that the order granted on 31 July was an interim order in a form of *rule nisi* with a return date of 7 September. The Applicant before me today would then have to demonstrate that he could not await the return date, that he was entitled to anticipate it and that he has shown cause why the *rule nisi* should not be confirmed.

10 The now Respondent before me today does not ask for the confirmation of the *rule nisi* but simply asks for the dismissal of the application for reconsideration, firstly on the basis that it is not urgent, and, secondly, that it does not in fact respond to the application which was brought *ex-parte*. The affidavit on which the application today is founded casts itself as a founding affidavit and does not include any specific responses to the contents of the founding affidavit on which the order was sought and
20 application.

It also contains certain allegations which are not supported by the annexures to the application. For example, it contends that the order that was granted freezes the First Applicant's personal bank accounts as well as the bank accounts of the Second Applicant (the law firm).

However, there is no evidence before me that the personal bank account of the first applicant has been frozen. The only evidence demonstrating the freezing of an account is a letter from the Standard Bank which refers to two accounts in the name of the firm, one of which is a current account and the other is the trust account.

The second complaint in support of urgency and which asks for reconsideration is that the First Applicant's ability to provide for his family and pay bills has been
10 affected because his personal account has been frozen. There is no evidence of this.

In addition, the First Applicant contends that the order suspends him from practice and precludes the firm from conducting its business. This is not what the order does. The order simply removes the Applicant's ability to deal with the bank accounts and requires that the legal practice council deals with the bank accounts on his behalf or appoints a curator to do so.

Mr Masweneng who appeared on behalf of the
20 Applicants placed a great deal of emphasis on the word "curator", saying that it means that the First Applicant's ability to function at all has been compromised by the appointment of a curator but that is obviously not what the word "curator" in this context means. In this context the only function of the curator is to administer the bank

account in the ordinary course of business on the Applicant's behalf. There is nothing to prevent him from carrying out his legal practice and the curator or the legal practice council is supposed to co-operate with him in administering the account in accordance with the requirements of the business. If they have not done so or are being unreasonable his recourse would have been against them rather than the Respondent that he has brought to court today.

10 Taking into account that the Applicants have not placed before this Court a proper response to the affidavit on the basis of which the *ex parte* order was sought and that there is no evidence of real hardship being experienced by the Respondents, I am not satisfied that urgency has been established and I am not satisfied that it is appropriate to anticipate the return date in this way. In any event in my view, it would prejudice the Applicant were I to consider this affidavit as his answer to the affidavit on which the *ex parte* order was obtained because it is simply
20 not an answer. By not considering it an answer it means he is still entitled to answer to that affidavit.

The application is hopelessly flawed, does not contain the basic evidence that it ought to have contained and is premised on a misconstruction of the order that was obtained. I see no reason why the Applicants should not

bear the Respondent's costs. For these reasons the application is struck from the roll and the Applicants are to pay the Respondent's costs on an attorney and client scale jointly and severally.



10 YACOOB, J

JUDGE OF THE HIGH COURT

DATE: 20 September 2024