

**IN THE HIGH COURT OF SOUTH AFRICA
EASTERN CAPE DIVISION, MAKHANDA**

Not Reportable

Case No: 1895/2024

In the matter between:

MZIWAMADODA SHEDRICK YABO

APPLICANT

And

RHODES UNIVERSITY

FIRST RESPONDENT

RAEESA ASMAL

SECOND RESPONDENT

JUDGMENT

MULLINS AJ:

[1] On 27 October 2023 the Applicant, a student at the First Respondent's university, was found guilty at a disciplinary enquiry of having sexually assaulted a fellow student. The enquiry, which was conducted by Second Respondent (who plays no part in these proceedings), excluded (expelled) the Applicant from the university for a period of three years.

[2] While the details of the charges and the proceedings of the disciplinary enquiry are of no relevance to this application, the subsequent developments are. Following the finding the Applicant launched no fewer than three urgent applications in this Court, all under the same case number. The first application was opposed and was struck off the roll and subsequently withdrawn. The second application was similarly opposed and struck off the roll. The third application achieved some success and the order granted in that matter is central to this application, in which

the First Respondent is the applicant and the Applicant the respondent. (I will continue to refer to the parties as they have been cited on the papers).

[3] On 10 July 2024 Malusi J granted an order, the relevant portions of which read as follows:

“2. A *rule nisi* is issued pending the finalisation of part B of the application:

...

2.3 The respondent is directed to admit the applicant as a student for the 2024 academic year in accordance with the first respondent’s requirements and applicable waivers pending the finalisation of part B.

2.3.1 The applicant and first respondent are directed to convene a formal meeting within 10 (ten) days of this order to agree on the academic schedule and residence of the applicant for the remainder of the 2024 academic year. In the event of no agreement is reached, each party is granted leave to approach the court on [an] urgent basis solely on this issue.

....”

[4] I pause to mention that the reference to Part B is an application by the Applicant to review the decision of the disciplinary enquiry.

[5] Exactly what is meant by a “formal meeting” is not stated, but from what occurred thereafter (which dealt with below) it appears that the parties understood what was required of them.

[6] As a result of this order the following events, which are either common cause or not seriously in dispute, occurred:

(a) On 11 July 2024 the Applicant sent an email to a Ms Smailes, the director in the office of the Vice Chancellor, stating that he would like to see her on 15 July 2024 in order to arrange the formal meeting;

(b) On 12 July 2020 the First Respondent's attorney replied that the First Respondent needed to consult with its legal representatives to consider the court order, but that:

"The University will revert with a response to your request within the timeframe allocated in the Court Order."

(c) Instead of waiting for a further response from the First Respondent, the Applicant took it upon himself to approach the student funding officer, a Mr Walters, for enrolment as a student. Based on information in his possession Mr Walters was satisfied that the Applicant's finances were in order to be admitted as a student, but that he did not qualify for admission to residence. He duly enrolled him;

(d) The Applicant then approached the manager of the student bureau, Ms Wicks, who is responsible for accommodating students in residence. The Applicant informed her that he had been financially cleared to register both academically and for a place in residence. Ms Wicks checked her "system" (her expression) which confirmed what she had been informed by the Applicant and duly placed him in a residence. She adds that had the Applicant informed her that he had only been cleared for academic admission she would not have allocated him a place in residence;

(e) On discovering these events, on 19 July 2020 the First Respondent's attorney wrote to the Applicant setting out the history of the matter, in particular that paragraph 2.3.1 of the Court Order had not been complied with. It was also pointed out that the Applicant was still in arrears in respect of his 2023 residence fees. The Applicant was given until 23 July 2024 to advise the First Respondent how he was going to pay the arrears;

(f) The Applicant failed to respond to this demand and on 12 August 2024 this application was launched on an urgent basis for an order that he vacate the residence within five days.

[7] The Applicant, who acted in person, opposed the application, which opposition is dealt with below.

[8] The Applicant alleges that:

(a) The First Respondent had failed to exhaust its internal remedies in that it had failed to arrange the formal meeting as provided for in the Court Order ;

(b) The matter was not urgent as this was self-created due to the fact that the Applicant had failed to arrange the formal meeting;

(c) The First Respondent's interpretation of paragraph 2.3.1 of the Court Order was incorrect (although how his interpretation differs is not clear) ;

(d) Finally, he disputes that he is in arrears with his residence fees and states that he had made arrangements for the payment thereof going forward.

[9] In reply the First Respondent attaches the outcome of the disciplinary appeal finding, which was handed down on 13 August 2024., i.e., after this application had been launched. The Applicant's internal appeal was dismissed. As this has no bearing on the relief claimed in this application I will have had no regard thereto.

[10] Significantly, in reply, the First Respondent states that the university had decided not to challenge the Applicant's academic enrolment, despite the result of the appeal. Thus, the only issue is whether the Applicant is entitled to remain in residence.

[11] The Applicant's allegation that the First Respondent had failed to exhaust internal remedies is without merit. In approaching the First Respondent's officials the Applicant was himself in breach of the Court Order and had "*thwarted*" (the First Respondent's expression) the very purpose for which the meeting had been ordered. His own email, dated 11 July 2024, acknowledges that a formal meeting was a prerequisite for his admission both academically and for a place in residence.

[12] There is also no merit in the Applicant's challenge to urgency. The parties had 10 days in which to arrange the formal meeting and when the Applicant unilaterally took the steps described above, the time period had not lapsed. The First Respondent gave the Applicant an opportunity to vacate the residence, which he failed to do. Only then was the application launched. The harm that the First Respondent alleges is that, firstly, no arrangements have been made for the payment of the residence fees and, secondly, given the history of the matter there is a legitimate fear for the safety of female students. The urgency is accordingly ongoing.

[13] I am not called upon to decide whether or not the Applicant should be allowed to take up residence and, if so, the conditions thereof. That is for the parties to deal with at the formal meeting which, as a result of the Applicant's actions, has not yet taken place. The Applicant may well have good arguments as to why he should be allowed to be admitted to residence and, if those arguments are rejected, he has the right in accordance with paragraph 2.3.1 of the Court Order to approach this Court on an urgent basis for the appropriate relief.

[14] All I am called upon to decide is whether the Applicant was entitled to be admitted to residence in the circumstances described above.

[15] The First Respondent alleges that the Applicant misled its officials in order to gain academic admission (which is no longer in issue) and for a place in residence. The Applicant denies this and submits that the officials should know what they were doing and would not have made a mistake. I do not have to decide this dispute because the fact of the matter is that, even if he does qualify for a place in residence, the First Respondent may (I put it no higher than that) have other valid reasons for not allowing him into residence. As I understand it that was the purpose of the formal meeting ordered by Malusi J, which meeting, it is not in dispute, the Applicant side-stepped.

[16] The Applicant submitted that if I grant the relief he will have nowhere to stay and this will, in effect, put an end to his academic career. One assumes that this

issue will feature in the formal meeting which still has to take place. In any event, the order I intend to make hopefully ameliorates this problem.

[17] I am satisfied that the First Respondent has made out a case for the relief it seeks, with one amendment: I intend to give the Applicant 10 days from the date of this order in which to vacate the residence, which co-incides with the period in which the formal meeting is to take place.

[18] In so far as costs are concerned, the Applicant is the architect of his own misfortune. The 10 days in which the formal meeting was to have taken place had not lapsed when he unilaterally approached the First Respondent's officials in the manner described above. In the circumstances the First Respondent is justified in having brought this application and costs should follow the result.

[19] I make the following order:

1. The Applicant is directed to vacate his residence room at Winchester House Residence, Rhodes University within 10 days of the granting of this order.
2. The Applicant is ordered to pay the costs of the application, such as cost to be on scale A.

NJ MULLINS
ACTING JUDGE OF THE HIGH COURT

Appearances:

First Respondent: Adv Somandi
 Huxtable Attorneys

Applicant: In Person

Heard on 21 August 2024

Delivered on 22 August 2024