



**THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA**

- (1) REPORTABLE: NO
(2) OF INTEREST TO OTHER JUDGES: NO
(3) REVISED.

13 January 2025

DATE

[REDACTED]

SIGNATURE

CASE NO: 11239 / 2006

In the matter between:

SHERIFF (PRETORIA NORTH EAST)

APPLICANT

And

VISHNU MUNILALL & ASSOCIATES

FIRST CLAIMANT

NATIONAL TREASURY

SECOND CLAIMANT

MINISTER OF FINANCE

THIRD CLAIMANT

JUDGMENT

RATSHIBVUMO DJP:

Delivered: This judgment in interpleader application was handed down electronically by circulation to the parties and/or their representatives by email and availing on *CaseLines*. The date and time for hand-down is deemed to be 10H00 on 13 January 2025.

[1] Introduction.

The year 2025 marks 19 years and counting, since the summons in this matter was issued. No trial appears on the horizon as none of the litigants seems interested in setting it down for hearing. The Norms and Standards for the Performance of Judicial Functions (Norms and Standards), promulgated by the Chief Justice on 28 February 2014 provide that civil trials should be finalised within 12 months from the date of issue of summons.¹ Even before the introduction of the Norms and Standards, litigants have always been entitled to speedy resolution of disputes by the courts. The courts, through judicial case management introduced by Rule 37A of the Uniform Rules, are expected to direct the course of litigation in order to achieve what is now contained in the Norms and Standards.

[2] This case has a protracted history dating back to 11 April 2006 when the First Claimant instituted an action against the Minister of Justice and the State Tender Board (the First and Second Defendants in the main action). The action is for delictual damages in the amount of R82 million, over the defendants' purported failure to assess competing tenders for the recording and

¹ See Government Gazette no. 37390 para 5.2.5(i)(a).

transcription services for High Courts and Labour Courts in an open and impartial manner and for acting negligently in awarding the tender to Sneller Digital (PTY) LTD.

- [3] There has been several interlocutory applications and judgments since the summons was issued, which pushed the trial into obscurity. The First Claimant is the Plaintiff in the main action and is being represented by its owner, Mr. Munilall. In 2017 an order was granted by Chesiwe AJ, postponing one of the interlocutory applications *sine die*, and ordering the State Tender Board to pay wasted costs. The State Tender Board is not a party in the proceedings before this court. As a result of that order, the Applicant attached the goods belonging to the Second Claimant to satisfy the debt owed by the State Tender Board. The Second and Third Claimants objected to this attachment, causing the Applicant to issue an interpleader notice in terms of Rule 58.
- [4] When I was appointed to preside over the matter, it was hoped by the Judge President of Gauteng Division of the High Court, Mlambo JP (the Judge President), that I would finally deal with the trial, as it is evident from the directives that came together with the notification of the appointment. This was however not to be, as this judgment pertains to another interlocutory hearing flowing from the order made in 2017. To avoid delving into issues already dealt with or those which belong to the trial court, history leading up to this application would be as concise as may be relevant for the purpose of this judgment. The directives given by the Judge President referred to above, amongst others, a directive to hold a pre-trial conference, became irrelevant when the date by which the trial had to be set down, came and passed without the matter being set down.

[5] It important at this stage to state that, the moment my appointment was made known to the litigants, the First Claimant uploaded several documents on *CaseLines* and also sent them via emails, in which he protested against the directive to hold a pre-trial conference. Most of these documents did not reach my attention in advance, as Mr. Munilall sent them whenever an opportunity arose and in quick successions. Hardly a day (including weekends) went by without him sending an email although in others, he was only updating what he had already sent or uploaded. On the date scheduled for the pre-trial conference, which was held virtually, I was stunned to find a plethora of emails, one of which indicated that my services would no longer be required by Mr. Munilall. The email in question demanded that the Judge President should appoint another judge.

[6] It must have been my confessed ignorance of what he had written that prompted him to abandon his demands and allowed me to proceed and case-manage the matter and later, to hear this application, subject to him demanding that I would only hear the interpleader application. There is a pending application for rescission of judgment, which he already voiced the interest to have it set down before a different judge once this judgment is handed down. Since there was no application for my recusal, I will comment no further regarding Mr. Munilall's demands or the way forward in respect of any future applications and/or the trial. After all, I am just one of the several judges to have dealt with this matter and handed over the baton for others to deal with what remains.

[7] **Background.**

Following the issuance of summons by the First Claimant against the Minister of Justice and the State Tender Board, the former raised a special plea while the later did not defend the action. The First Claimant applied for a default judgment against the State Tender Board which application was dismissed by

Makgoba J on 17 July 2013. The main reason for the dismissal of the default judgment was that the State Tender Board had ceased to exist. The application for leave to appeal before Makgoba J failed as well as the petitions to the Supreme Court of Appeal and to the Constitutional Court.

[8] Subsequent thereto, the First Claimant launched several applications aimed at either breathing life into the particulars of claim, which were attacked through exceptions or seeking the rescission of judgment handed down by Makgoba J, by way of declaratory orders. In the process, and on 24 May 2017, Chesiwe AJ granted an order, postponing the application that was before her *sine die*. She further ordered the Second Respondent, the State Tender Board to bring an application for condonation, within 15 days. The Second Respondent was also ordered to pay the Applicant (current First Claimant)'s wasted costs occasioned by the postponement. These costs have been taxed but remain unpaid.

[9] With the intention to recover the taxed costs, the First Claimant brought an application for *mandamus* that was heard by Bezuidenhout J, in which it sought an order directing *inter alia*:

“(a) Both Respondents (the Minister of Justice and the State Tender Board) must admit that all references to the State Tender Board is actually reference to the Department of Finance.

(b) The various employees of the Department of Finance and State Attorney are to pay the wasted costs of R2303.50 on behalf of the Second Respondent relating from the order of Chesiwe AJ of 24 May 2017.

(c) The wasted costs of debt collecting and preparing for this hearing be paid by the Director General of Finance jointly, with the State Attorney and its employees, Mr. Chowe and Ms. Zenani.”²

² See paragraph 17 of Judge Bezuidenhout's judgment, dated 12 November 2021 on p. 026-19 on *CaseLines*, under this case number.

[10] This application was dismissed on 12 November 2021. In dismissing the First Claimant's application for *mandamus*, Bezuidenhout J reasoned that "the relief that is sought... cannot be granted when the specific persons or entities against which the relief is being claimed are not joined as parties in the proceedings. They have to be joined and proper notice be given to them of the relief that is being sought against them."³ The court went on to demonstrate how impractical it was for it to order the State Tender Board to comply with the order to pay R2 303.50 in taxed costs, while the question on whether the Board still existed was referred to trial by an order of Davis AJ, and which order was not appealed against. The court however left it open to the First Claimant, to proceed in terms of Rule 45, against the Second Respondent (the State Tender Board), for as long as the First Claimant was of the view that the State Tender Board still exists and that the Minister of Finance was responsible for Board's liabilities.

[11] The First Claimant opted to proceed in terms of Rule 45, resulting in the Applicant attaching three desktop computers from the offices of the Second Claimant on 04 August 2023. On 04 August 2023, the Second Claimant directed a letter to the Applicant, demanding the return of the attached goods as they did not belong to the judgment debtor (the State Tender Board), nor was it (the Second Claimant) a party to the proceedings resulting in the judgment debt. On 17 August 2023, the Applicant filed an interpleader notice, calling on the parties to show cause to substantiate their opposing claims to the goods so attached. Both the First and the Second Claimants filed their claims to the attached goods in line with the Applicant's notice. The First Claimant seeks an order in which the Second Claimant is held liable for the costs awarded against the State Tender Board. The Second and the Third Claimants

³ See paragraph 19 of Judge Bezuidenhout's judgment, *supra*.

seek an order in which the goods are returned to the owner and that the First Claimant should be ordered to pay costs on attorney and own client scale.

[12] **Issues for determination.**

The court is called upon to answer, if the Second claimant is liable for the judgment debts incurred by the State Tender Board as well as whether the goods belonging to the Second Claimant can be attached in lieu of the judgment debt obtained against the Board. Flowing from the two issues left to the court for determination would be a question of whether the State Tender Board still exists or not. Secondary from these questions would be the question on whether these issues have not been adjudicated by the courts in the past.

[13] **Discussion.**

It is common cause that summons was issued against the Minister of Justice and the State Tender Board as the First and the Second Defendants in the main action. It is also common cause that the order by Chesiwe AJ was against the State Tender Board, making it the judgment debtor, and not the National Treasury or the Minister of Finance (the Second and the Third Claimant *in casu*). The order sought by the First Claimant against the Second and the Third Claimants in this interpleader is no different from the order sought in the application for *mandamus* that was dismissed by Bezuidenhout J save for the fact that in one, the order was sought pre attachment of the goods, and in the other, it was post attachment.

[14] The validity of a writ of execution issued against the State Tender Board is not an issue before this court. For purposes of this application, it should be presumed that it remains valid. The duty on every organ of the State to obey a court order is not disputed either. What is rather contentious is the attachment of goods belonging to a party that was not cited in the litigation before the court or that was not listed as a judgment debtor in the writ.

[15] The First Claimant relies on section 12(1) of the State Tender Board Act⁴ which provides,

“12. Administrative Work.

(1) All administrative work, including the payment and receipt of moneys, in connection with the performance of the functions and the exercise of the powers of the board shall be performed by officers and employees designated by the Director-General: Finance.”

[16] The First Claimant’s contention is that, if the administrative work, including the payment of moneys, in connection with the performance of the functions and the exercise of the powers of the board is performed by officers and employees designated by the Director-General: Finance; then the said Director-General can also be held liable for the debts incurred by the board and where the Board is a judgment debtor. Clearly, this argument does not appear from the words used in the legislation and the First Claimant does not present any authority to back up its interpretation to that effect.

[17] If the First Claimant’s interpretation is correct, it would as such make no difference if the judgment debtor is the Board or the National Treasury as the two would be one and the same for the reason that payments for debts are made from one source. But the reading of the Act as a whole makes the Board to be a separate institution from the National Treasury. There is equally no basis on which it can be held that payment of a judgment debt is an administrative work as provided by section 12 of Act 86 of 1968.

[18] Before proceeding in terms of Rule 45, the First Claimant was aware of the hurdles before it regarding the execution of a writ as the costs order by Chesiwe AJ. This view is premised on the fact that the order was against the

⁴ Act no. 86 of 1968, as substituted by s. 6 (a) of Act 74 of 1971 and by s. 5 of Act 18 of 1987.

State Tender Board, a party that in the recent past and in the same case, an application for default judgment against it was refused for the reason that it did not exist.⁵ The First Claimant knew very well that an attempt to appeal against that ruling was dismissed, and so was the petition before the Supreme Court of Appeal and the Constitutional Court. Any submission before this and other courts to show that the State Tender Board still exists should be seen as an attempt to cause this court (and other courts before which this attempt was made) to sit as a court of appeal whereas it has no such jurisdiction.

[19] The First Claimant was equally aware that the question on the existence of the State Tender Board was dealt with in a rescission application heard by Davis AJ despite the fact that it (the First Claimant) had exhausted the appeal avenues against the findings by Makgoba J regarding the same dispute. Davis AJ refused to make a finding, rather holding that the dispute regarding the existence or otherwise of the State Tender Board could only be determined in a trial between the parties in the main action.⁶

[20] The fact that there was a court order that held that the judgment debtor did not exist, should have concerned the First Claimant. It is therefore not surprising that it chose not to just attach the Second Claimant's goods to satisfy the judgment debt. It could as such not just rely on its own understanding and interpretation of section 12 of Act 86 of 1968 but rather approach the court for a declaratory order. This was a wiser move in my view. I however do not see much wisdom in persisting on attachment of the Second Claimant's goods and demanding that it should be held liable for this debt, especially after the

⁵ See the judgment by Makgoba J dated 17 July 2013 on p. 009-20 on *CaseLines* where the following appears: "The persistence by the Plaintiff that the Second Respondent [State Tender Board] still exists cannot hold water... In the circumstances, the application for default judgment cannot be sustained as against a non-existent body."

⁶ See paragraph 10. 2 of the order in the judgment by Davis AJ dated 23 September 2016 on p. 26-11 on *CaseLines*.

warning by Bezuidenhout J referred to above and all the other judgments by other judges that dealt with the same aspect.

[21] This court is of the view that the order sought by the First Claimant in this application had been adjudicated already in a judgment handed down by Bezuidenhout J who reached a conclusion that the National Treasury and the Office of the State Attorney could not be held liable for the costs awarded in a litigation that they were not party to. In that judgment, Bezuidenhout J dismissed the application sought by the First Claimant. That judgment has not been appealed against and remains binding. This court has no reason to find differently. The claim by the Second and the Third Claimants to the attached goods should be upheld.

[22] **Costs.**

Costs are entirely within the court's discretion, which should be exercised judicially upon a consideration of various factors.⁷ So many mishaps played out in various applications in this case because when orders that did not favour the First Claimant were handed down, instead of it accepting the final outcome thereof, it would rehash the same issues in different wording, in a new application and before different judges but meant to achieve similar outcome sought in earlier applications. Almost all the judgments handed down in various interlocutory applications in this case had one aspect to be considered, being the existence of the State Tender Board. Had the First Claimant accepted the final determination by Makgoba J (including outcome of appeal or petition process), I doubt if this interpleader would be before the courts today.

[23] Had there been acceptance of the order by Davis AJ referring the disputed issues to trial (which order came after the determination on the dispute by

⁷ *Roos v Simonsig Landgoed* 1994 (4) SA 204 (A) at 208D-G.

Makgoba and the courts of appeal), the main action would have been finalised several years ago. Acceptance of the outcome does not take away the litigant's right to appeal. That however does not entail bringing same issues before different judges while the orders made in the past are not set aside on appeal. There is a potential to have conflicting rulings from judges of the same jurisdiction sitting as single judges. That is unwarranted and should be avoided.

[24] I highlight the above to demonstrate how the conduct of the First Claimant deserves to be frowned at by the court. The First Claimant submitted that no cost order should be made against any of the litigants arguing that in line with the Biowatch judgment, the application raised constitutional issues. No elaboration was made as to how an interpleader application would raise constitutional issues or what such constitutional issues are. Even if there were genuine constitutional issues, the conduct of this application especially when issues that had been adjudicated upon already are rehashed for a fresh judgment, deserves to be frowned at. It is as a result of this litigation style that this matter has overstayed its welcome in the court rolls. Given all the above, I am of a view that costs should be awarded on punitive scale against the First Claimant.

[25] **Order.**

For the aforesaid reasons, I make the following order.

[25.1] That the Second Claimant's claim to the goods subject to the writ of execution in the interpleader is upheld;

[25.2] That the First Claimant's claim in the interpleader is dismissed;

[25.3] That the Applicant and/or the Registrar in possession of the goods removed by the Applicant is directed to release the attached goods to the Second Claimant;

[25.4] That the First Claimant is ordered to pay the costs of the interpleader proceedings on an attorney and client scale; such costs to be paid before any other application in this case, can be set down by the First Claimant.


TV RATSHIBVUMO
DEPUTY JUDGE PRESIDENT

FOR THE APPLICANT:	NO APPEARANCE
FOR 1ST CLAIMANT:	MR. V MUNILALL (IN PERSON)
FOR THE 2ND & 3RD CLAIMANTS:	ADV R TULK & ADV C JURIS
INSTRUCTED BY:	OFFICE OF THE STATE ATTORNEY PRETORIA
DATE HEARD:	02 DECEMBER 2024
JUDGMENT DELIVERED:	13 JANUARFY 2025