

**REPUBLIC OF SOUTH AFRICA
IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, JOHANNESBURG**

Case Number: 038394/2025

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

In the matter between:

L[...] M[...] T[...]

Applicant

and

MATODZI NELUHLINI ATTORNEYS

First Respondent

MATODZI NELUHLINI

Second Respondent

LEGAL PRACTICE COUNCIL

Third Respondent

JUDGMENT – COSTS

PJ DU PLESSIS AJ

[1] The matter came before me on the Urgent roll on 25 March 2025. It was apparent on the papers that this matter being enrolled on the urgent roll was an abuse of process, *ab initio*. There was a request it be removed from the roll by the

Applicant in court, which was granted. The order as to costs however was reserved and therefore this judgment.

[2] High court rule 6(12) deals with urgent applications and have specific requirements for Urgency. This entails that an Applicant MUST demonstrate that a matter is genuinely urgent and that they'll suffer significant prejudice if not heard urgently.

[3] In this matter the Applicant was demanding payment of RAF money due to her from a claim instituted by the first Respondent on behalf of her late father's estate when she was just 2 years old. Her father passed in 2004 after a fatal motor vehicle accident and she sadly lost her mother 3 years later. She was brought up by a guardian and from the papers had a difficult life.

[4] She herself now has an infant child and is in an abusive relationship which seems to have ended. Although not unsympathetic to her personal circumstances, these circumstances are of such where her attorney Mr Gaju should have informed her of her recourse to approach the Domestic Violence court as well as the Maintenance court for relief. The only "urgency" reflected in the papers seem to be her current personal circumstances which have avenues of redress, not pursued, but "abused" in affidavit to attempt in fuelling the fire of urgency where there is none.

[5] In order to promote this current application, the Applicant terminated the mandate of the First respondent. They dealt with the matter for 20 Years to get the RAF claim liquidated for the late estate. The First respondent on 9 July 2024 received an amount of R371 246, 25 paid into his trust account in respect of the RAF claim. The Applicant was informed thereof the next day and later upon her continuous demand an advance of R30 000 was given. This was not enough, and when she demanded more, which was refused due to pending taxation, the Applicant secured the services of Mr Gaju, who continued with demands to the first two respondents, on her behalf.

[6] Mr Gaju was informed by email on Wednesday 19 March 2025 at 13h21, MN 6 of respondents answering affidavit, that *"we will revert to you with our bill of costs*

*for work done and our disbursements. **All the documents and everything will be submitted to you next week including the balance of the funds***” This was in reply to Mr Gaju’s URGENT COURT ACTION threat per e-mail MN 5 of the previous morning.

[7] I mention these dates and times and emphasise them, as the URGENT ROLL closes at 12h00 on a Thursday - almost 24 hours, AFTER Mr Gaju had the above undertaking in writing. There was therefore a FULL DAY almost for him (and the Applicant) to reflect and reconsider, yet they persisted. I can only imagine this dubious decision was taken as he had assurances of money coming to his trust account from the defendants, so payment is assured and an urgent application is not free, especially if there is guaranteed money.

[8] I refer to my opening paragraph in this judgment, and the above is just to fortify the believe I hold. It is however not the end of events as there was (usually uncommon in urgent applications) a supplementary affidavit filed at 14h03 Monday 24 March 2024. I can but only deduct from it that it was a last-ditch effort by the applicant to manipulate the court into finding urgency, where there is none. This by involving Applicant’s minor child in the manipulation and stating the following in par 16 “I submit that my circumstances are a reminder of my past which past includes to attempted suicide that I survived due to physically, emotionally and financially abuse and ill-treatment from my family” – Quoted, as badly as it was written.

[9] Then to cap everything when entertaining the matter in court and inquiring from the Respondents Adv Tshigomala what the taxation date was, I was informed the Applicants legal representative Mr Gaju would like to address me regarding removing the matter from the roll. This was indeed eventually articulated by him as he started with the merits of the matter whilst I wanted to hear if there is a request for removing the matter and whether costs will be tendered. This is because my initial view, even if the matter proceeded, was that it had no urgency.

[10] When the above removal was eventually articulated I inquire if costs were being tendered upon which Mr Gaju indicated it should be awarded in the cause. I am unclear what cause that would be, as he has an undertaking in writing from the

second defendant that, “***All the documents and everything will be submitted to you next week including the balance of the funds***” He however indicated costs are not tendered and I indicated to him that I was considering punitive cost - *de bonis propriis*.

[11] Adv. Tshigomala for the first two respondents indicated that they want cost awarded on “an attorney own client” basis. My issue was that if so, the Applicant, who was clearly ill advised by Mr Gaju, would have to pay. Mr Gaju was arguing against any cost order and as I was considering costs *de bonis propriis*, I directed he could upload heads of argument on the issue of costs (which I reserved) before 12h00 on 26 March 2025. These heads were received on Caselines at 00h31 early morning.

[12] In his heads of argument on costs Mr Gaju states there was no negligence or misconduct on his part and he was acting on instructions. He shifts the blame to the first and second respondents for not informing the Applicant properly of crucial dates, whilst at the same time stating they held no instructions. He then attempts to justify the urgency again by emphasising the Applicants financial hardships, the Respondent withholding her funds and their lack of mandate and fee agreement. He accuses them of misleading the court and that they must in fact bare the costs, whilst stating if the court doesn’t rule against them, it will be condoning their misconduct. He repeats his argument for costs in the cause and submits no punitive order should befall him.

[13] Urgency is not a preference, it’s a legal threshold that must be met as courts prioritise genuine urgent cases where immediate action is essential to prevent irreparable harm or address situations where delaying the matter would render justice ineffective. It has been held numerous times that the Sanctity of the Urgent Court has to be preserved for deserving matters, lest the Urgent Court would be flooded with cases that can find redress in the normal course.

[14] What is Costs *de bonis propriis*? It is a Latin phrase that means from one’s own goods / property. So, it entails the individual penalised must pay the costs from his / her own pocket. This avenue isn’t easily pursued by a court and is appropriate

where there was improper conduct through, gross negligence; mala fide (bad faith) conduct; unreasonable or reckless behaviour; abuse of court processes; dishonesty (not a closed list). In the case of legal practitioners, it serves as a sanction for conduct that significantly deviates from the expected standards of professional behaviour.

[15] The purpose of such an order is amongst others to hold accountable legal practitioners that caused the occurrence of unnecessary legal cost where there was misconduct and now their clients are responsible for the cost. I include in the term “misconduct” bad and or wrong advise to self serve, which is applicable in this case.

[16] I find this because Mr Gaju had a written undertaking basically a day before the urgent court roll closed that the trust money would be paid over to his trust account. There was no urgency at all in the application he was launching on behalf of the Applicant (despite his belief held to the contrary)

[17] I find this because the urgency in wanting the RAF money, kept it trust paid to his trust as the new attorney, should surely have been based on evidence of misappropriation of funds or some other gross infraction that can be placed at the door of the Respondent(s). This was not the case. His urgency was based on the Applicants dire personal circumstances with which the respondent had nothing to do.

[18] The only urgency demonstrated in his papers was, the urgent need for advice from him to the Applicant, to approach a domestic violence and maintenance court, and his assistance in doing so.

[19] As an officer of the court, he should have realised, that an averment made in Par. 8 supra would trigger a courts attention. This because, courts are the guardians of all minor children, and will only act in their best interest. Mr Gaju used this (suicide allegation) as a manipulation tactic rather than realising he (although discretionary due to the use of the word, may) as an officer of the court, should have given serious

consideration to the provisions of Section 110 (2) of The Children's Act¹. This as a suicidal mother may be a real threat to her infant.

[20] On the issue of the infant, his papers drawn in the Notice of Motion is also muddled as it indicates the child is one year old (Par 36) and in the supplementary affidavit (par 15) the son of the Applicant is 6 months old. There isn't even clarity on this aspect.

[21] The final insult was the fact that when the matter was called, the eventual request was for it to be struck from the roll without tendering costs. This realisation should have been present with Mr Gaju already at the latest on Wednesday at 13h21 when he got the written undertaking of the Respondent. The realisation at a minimum should have been to, not even launch this unnecessary and non-urgent application.

[22] Practitioners are warned by the Consolidated Practice Directives 1 / 2024 as follows under 28 where URGENT COURTS is the heading at 28.8: "*The enrolment of an allegedly urgent matter found not to warrant a hearing on this roll may, at the discretion of the Judge seized with the matter, result in punitive costs being awarded and the culpable counsel and attorney being ordered not to be paid any fees arising from the prosecution of such matter(s)*".

[23] Our Supreme Court of Appeal (SCA) held in *Chithi and others; In re Luhlwini Mchunu Community v Hancock and others*² at par 14 "The principle that the courts should not grant adverse court orders, without providing the affected parties an opportunity to be heard, is trite and sacrosanct." Mr Gaju was provided with this opportunity.

[24] In *SA Liquor Traders Association and others v Chairperson, Gauteng Liquor Board and Others*³ held: "An order of costs de bonis propriis is made against

¹ 38 of 2005

² (Case no 423/2020) [2021] ZASCA 123 (23 September 2021)

³ 2009 (1) SA 565 (CC) par 54

attorneys where a court is satisfied that there has been negligence in a serious degree which warrants an order of costs being made as a mark of the court's displeasure. An attorney is an officer of the court and owes a court an appropriate level of professionalism and courtesy....".

[25] In *Multi-Links Telecommunications Limited v Africa Prepaid Services Nigeria Limited*⁴ Fabricius J held: "It is true that legal representatives sometimes make errors of law, omit to comply fully with the Rules of Court or err in other ways related to the conduct of the proceedings. This is an everyday occurrence. This does not however per se ordinarily result in the court showing its displeasure by ordering the particular legal practitioner to pay the costs from his own pocket. Such an order is reserved for conduct which substantially and materially deviates from the standard expected of the legal practitioners, such that their clients, the actual parties to the litigation, cannot be expected to bear the costs, or because the court feels compelled to mark its profound displeasure at the conduct of an attorney in any particular context".

[26] For the reasons above I indicate the courts "profound displeasure" at the conduct of Mr Gaju. The impression left with this court is that there was a realisation with him that trust money was coming so legal action (even unnecessary) can be pursued, as payment is guaranteed. In the result I make the following order as to costs.

Order

Costs are ordered *de bonis propriis* against Mr Gaju on an attorney and client scale in favour of the First and Second Respondent who was represented at the matter.

PJ DU PLESSIS AJ
ACTING JUDGE OF THE HIGH COURT
JOHANNESBURG

For the Applicant: Mr Simphiwe Gaju

⁴ 2014 (3) SA 265 (GP) (6 September 2013) at par 35

For the Respondent: Adv Tshigomala instructed by Mathodzi Neluheni Attorneys

Delivered 14h00 26 March 2025