



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

CASE NO.: 2489A/2024

In the matter between:

MZIWAMADODA SHEDRICK YABO

APPLICANT

and

RHODES UNIVERSITY

1ST RESPONDENT

RAEESA ASMAL

2ND RESPONDENT

JUDGMENT

ROBERSON J:

Introduction

- [1] The applicant has applied for a rule *nisi* to the effect that the first respondent (Rhodes) should show cause why it should not be declared to be in contempt of an order issued by Malusi J on 10 July 2024, and that a sanction of a fine

and conditionally suspended imprisonment be imposed on Ms Susan Smailes, the deponent to the respondents' answering affidavit and who is not a party to this application. He has also asked for an order that Rhodes should admit him as a student for the 2025 academic year. The application was opposed. The applicant appeared on his own behalf and Mr Somandi appeared for the respondents.

Background

- [2] The applicant was registered as a student at Rhodes in 2022. During 2023, in disciplinary proceedings, he was found guilty of sexual assault of a fellow student. The sanction imposed was three years' exclusion from the university. The second respondent was the Proctor in the disciplinary hearing (the Proctor). An internal appeal was unsuccessful.
- [3] In other proceedings, the applicant has applied to this court for an order to review and set aside the decision of the Proctor. On 10 July 2024 Malusi J granted an order, framed as a rule *nisi*, suspending the decision of the Proctor pending the finalisation of the review application. Directions were given pertaining to time frames for an internal appeal. The pertinent part of the order was:

“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. The applicant and the first respondent are directed to convene a formal meeting within ten (10) 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 no agreement is reached, each party is granted leave to approach the court on urgent basis solely on this issue.”

- [4] Rhodes has applied for leave to appeal against these two paragraphs of the order, which it maintains suspended operation of the order in terms of s 18 (1) of the Superior Courts Act 10 of 2013. Nonetheless the merits were argued.
- [5] The applicant was enrolled as a student following this order and wrote his final examinations. When he sought to find his examination results on the Rhodes website, he discovered that he had been excluded from Rhodes as from 2 February 2024.
- [6] On 12 November 2024 Norman J, on the application of Rhodes, issued an order against the applicant, pending the outcome of the review application. The relevant portion of the order is:
- “2.1 The two urgent applications launched by the Respondent against the Applicant in this Honourable Court (under case numbers 1895/2024 and 2489/2024) are stayed;
- 2.2 the Respondent is interdicted and restrained from launching and/or instituting and/or issuing and/or pursuing any further actions and/or applications and/or any other legal process against the Applicant, without the permission of this Honourable Court, as contemplated in Section 2 (b) of the Vexatious Proceedings Act 3 of 1956”.
- [7] The reference to s 2 (b) of Act 3 of 1956 is to the provision in that subsection that a court or any judge shall not grant leave to a person to institute proceedings unless it is satisfied that the proceedings are not an abuse of the process of the court and that there is prima facie ground for the proceedings. The applicant initially sought leave to appeal against Norman J’s order but withdrew such application.

Preliminary points

- [8] The applicant launched a similar application to the present one which was dismissed by Ntsepe J on 21 January 2025. No reasons are available for this decision. It was submitted on behalf of Rhodes that this was a judgment on the merits and is thus *res judicata*. The applicant on the other hand said it was dismissed because he had not applied for leave as contemplated in s 2 (b) of Act 3 of 1956. I prefer to assume without deciding that the merits were not decided by Ntsepe J. It was further submitted on behalf of Rhodes that the applicant had not followed the proper procedure to obtain such leave. In his notice of motion, although not included as a prayer, the applicant did ask for the court's permission as contemplated in s 2 (b) of Act 3 of 1956. Again I shall assume without deciding that he followed the correct procedure and further that the requirements for obtaining leave were met. It is preferable to deal with the merits of the contempt application.

Contempt

- [9] The requirements for civil contempt were stated in *Fakie NO v Civil Systems (Pty) Ltd* 2006 (4) SA 326. In his summing up, Cameron JA (as he then was) stated at paragraph [42] (c):

“In particular, the applicant must prove the requisites of contempt (the order; service or notice; non-compliance; and wilfulness and mala fides) beyond reasonable doubt.”

The applicant's contention in his founding affidavit was that Rhodes was in breach of Malusi J's order in that it had refused him residence at Rhodes and had excluded him from Rhodes.

- [10] The question of the applicant's residence was dealt with in the answering affidavit, deposed to by Ms Susan Smailes, who is employed by Rhodes as a Director in the Office of the Vice Chancellor and Chief of Staff. She stated that the applicant improperly and unilaterally, and before the ten days for a meeting had expired, managed to be registered academically and assigned a place in residence. Rhodes launched an urgent application to evict the

applicant from the residence. The applicant opposed this application. Mullins AJ granted the eviction order on 22 August 2024. (Unreported judgment, case number 1895/2024.) In his judgment in relation to costs he stated at paragraph [18]:

“..... 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.”

- [11] In his replying affidavit in the present application, the applicant did not dispute Ms Smailes’ evidence relating to his occupation in and eviction from residence. In the circumstances, there can be no finding that the order of Malusi J was wilfully and *mala fide* disobeyed in relation to the alleged refusal of residence.
- [12] In the answering affidavit Ms Smailes stated that even though the identified parts of the order of Malusi J were suspended by the application for leave to appeal, Rhodes nonetheless indulged the applicant and admitted him as a student during 2024. This was to allow the review to be finalised as expeditiously as possible. The order to admit the applicant for the 2024 academic year, so she stated, was complied with.
- [13] Further in the answering affidavit, Ms Smailes stated that the reason why the applicant had been denied admission for the 2025 academic year was because he had outstanding debts incurred during the 2024 academic year and that no payment arrangements had been made for the 2025 academic year. In other words, the reason for denying him admission for 2025 was not related to the Proctor’s sanction.
- [14] The debt incurred during the 2024 academic year was not disputed by the applicant. The applicant stated that he has been awarded a bursary of

R40 000.00 by the Legal Practitioners Fidelity Fund for the academic years 2024 and 2025 at Rhodes. He furnished a letter from this body which confirms the bursary and furnished proof of a payment to Rhodes of R40 000.00 made on 23 July 2024. He also stated that the National Student Financial Aid Scheme (commonly known as NSFAS) has awarded him a loan on proof of registration. However, it is apparent from Ms Smailes' affidavit that at this point a decision has been made not to admit the applicant for the 2025 academic year and it is not for this court to interfere with that decision based on the information provided by the applicant. That is an administrative decision for Rhodes to make, based on its own requirements and policies. It follows that this court cannot order Rhodes to admit the applicant for the 2025 academic year.

[15] The applicant seemed to rely on what was stated on the Rhodes website that he had been excluded from 2 February 2024. When it was pointed out to the applicant during argument that Rhodes had not excluded him for the 2024 academic year, he contended that the order of Malusi J that Rhodes admit him for the 2024 academic year should be interpreted to include the 2025 academic year. In my view, if the order was to be interpreted in this manner, it would lead to an absurd result in that if the review was not finalised, Rhodes should admit the applicant for years to come pending the finalisation of the review. The order of Malusi J refers only to admission for the 2024 academic year. The order directing a meeting refers only to the 2024 academic year. There can be no other interpretation.

[16] The applicant has therefore failed to establish that there was a breach by Rhodes of Malusi J's order that Rhodes admit him for the 2024 academic year.

[17] In the result the application cannot succeed. Mr Somandi asked for costs on the party and party scale. I shall make such an order. However, the applicant is warned that unfounded allegations of lies on the part of Ms Smailes and some sort of relationship between this court and Rhodes could well have

resulted in a punitive costs order. Even as a layperson he should know to moderate his language in a public document.

[18] The following order is made:

The application is dismissed with costs.

J. ROBERSON
JUDGE OF THE HIGH COURT

APPEARANCES:

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Judgment delivered on : 20 February 2025