



**IN THE HIGH COURT OF SOUTH AFRICA
FREE STATE DIVISION, BLOEMFONTEIN**

**Reportable / Not
reportable**

Case no: 7133/2024

In the matter between

MINISTER OF POLICE

First Applicant

NATIONAL DIRECTOR OF PUBLIC PROSECUTIONS

Second Applicant

and

MALEFETSANE EZEKIEL LETSHELA

First Respondent

SHERIFF PRETORIA CENTRAL

Second Respondent

Neutral citation: *Minister of Police and Another v Letshela and Another* [2025]

Coram: Mpama AJ

Heard: 20 February 2025

Delivered: This judgment was handed down electronically by circulation to the parties' representatives by email and released to SAFLII. The date and time for hand-down is deemed to be 14h00 on 19 May 2025.

Summary:

ORDER

1. The special defence of *lis pendens* raised by the respondent is granted and the rule *nisi* granted on 13 December 2024 is discharged.
2. The first and second respondents are ordered jointly and severally, the one paying the other to be absolved, to pay the respondent's costs of the application on Scale C as envisaged under rule 67A of the Uniform Rules of the Court

JUDGMENT

Mpama AJ

- [1] The applicants seek a final interdict against the first and second respondents to restrain the respondents from executing a warrant of execution obtained by the first respondent. The application is opposed by the first respondent only.
- [2] The applicant launched an *ex parte* urgent application on 13 December 2024 and a rule *nisi* was granted with the following relief:
1. This matter is heard on an urgent, *ex parte* basis.
 2. The forms and service provided in terms of the Rule 6(10) of the Uniform Rules of Court is dispensed with and non-compliance with the usual forms and manner relating to service as prescribed by the Uniform Rules of Court is condoned.
 3. A rule *nisi*, with return date Thursday, 30 January 2025 at 09h30, is issued calling on the first respondent and/or second respondent to show cause why an Order in the following terms should not be made final:
 - 3.1. The execution of court orders of the Regional Magistrate Tsatsimpe dated 30 November 2023 and 11 April 2024 is suspended.

3.2. The first and second respondents are interdicted and restrained from proceeding with execution steps in respect of the Notice of Attachment in Execution dated 29 July 2020, pending the finalization of the application in respect of Part B issued in terms of the same case number-FS/BHM/RC/148/2023, in the Regional Magistrates' Court, Bethlehem which is set down for hearing on 23 January 2025.

3.3. The First and Second Respondents are interdicted and restrained from removing, disposing and selling the Applicant's movable property in terms of the writ of execution issued under case number FS/BHM/RC/148/2023 dated 22 August 2024, pending the finalization of the application in respect of Part B issued in terms of the same case number – FS/BHM/RC/148/2023, in the Regional Magistrates' Court, Bethlehem which is set down for hearing on 23 January 2025.

4. The relief as set out in paragraphs 3.1 to 3.3 above is granted and shall operate with immediate effect.

5. The first and Second Applicants are directed to serve on the first and second respondents;

5.1. A copy of this court order;

5.2 The notice of motion in this application and the founding affidavit together with its annexures; and

5.3 A notice informing the respondents that the return date for the confirmation of the rule nisi may be anticipated on 48 hours written notice to the applicant, at the address of the applicant's attorneys.

6. Costs of this application shall be paid by the first and second applicants, except if the matter is opposed, in which case any respondent opposing the relief sought be ordered to pay costs jointly and severally, one paying the other to be absolved.

7. Service of the interim order shall be effected in the following manner:

7.1 By serving a copy of this order, Notice of Motion, affidavits and annexures on the First and Second Respondents.

7.2 the applicant is granted leave to send/ affect service of the court order to the First and Second Respondent by way of email and that such email may be used for purposes of service.

[3] It is necessary to sketch out the background of this matter. The applicants and the first respondent are embroiled in litigation which commenced when the first respondent issued summons against the first and second applicants for unlawful arrest, detention and malicious prosecution on 6 September 2023 in the Regional Court,

Bethlehem (the regional Court). The applicants failed to file a notice of intention to defend and consequently, on 30 November 2023, an order by default on merits was obtained by the first respondent against both applicants. On 25 March 2024, the applicants filed and served their notice of intention to defend. On 11 April 2024, the regional court granted an order by default on quantum against the applicants. Resultantly, the first respondent obtained a warrant of execution against the applicants' property. This warrant appears to have been filed and issued on 29 July 2020 (as per the assistant registrar's stamp). An affidavit has since been filed by the assistant registrar explaining this issue. The issue of this date is a subject of dispute between the parties on another application brought by the applicants against the first respondent; it is not relevant to this application and I choose to say nothing more on it. On 12 August 2024, the writ was received by the second respondent for execution. On 20 August 2024 the second respondent visited the offices of the first applicant and attached some movable property. The second respondent is not opposing the application and since it is only the first respondent before court, I will refer to the first respondent, as the respondent.

[4] On 12 December 2024 the applicants approached the regional court with a two-part application. On Part A they sought an interim order on an urgent basis to stay or suspend the warrant of execution issued by the assistant registrar on 29 July 2020 pending the determination of their application for the rescission of judgment. On Part B, the applicants sought rescission of judgments granted by the regional court on merits and quantum.

[5] That application was served on the respondent's attorney on 10 December 2024 and heard by the regional court on 12 December 2024. It is common cause between the parties that the court struck the application from the roll and awarded a cost order against the applicants.

[6] It is the applicants' contention that the matter was struck off by the magistrate as the original papers were not before court. The applicants have explained in detail the reasons for not filing the original papers. I do not wish to dwell much on this as it is not germane to the issues before this court.

[8] On 13 December 2024 the applicants, once again approached this court on an urgent and obtained a rule *nisi* as stated above. The applicants now seek confirmation

of the rule *nisi*. The respondent raised a point *in limine*. It is the respondent's contention that the application in the regional court brought by the applicants against the first and second respondent, which was struck off, did not cease to exist; the same relief was sought as in this application, and since it was not withdrawn by the applicants, it remains pending. Therefore, the applicants' application should be dismissed.

[9] In their replying affidavit, the applicants contended that the point *in limine* has no basis and should be dismissed by the court. They averred that, by virtue of the interim order granted against the respondents, the application in the regional court is now moot. There is no other pending case based on the same cause of action before the regional court. Furthermore, it was stated that this court is clothed with a wider discretion than the magistrates' court. As such, even if the respondent is successful in proving his special defence, the court should still proceed with this matter in the interest of justice.

[10] In *Solidariteit Helpende Hand NPC and Others v Minister of Cooperative Governance and Traditional Affairs*¹ the Supreme Court of Appeal, as per Salduker JA, expressed itself as follows at para 12:

'The general principle is that a matter is moot when a court's judgment will have no practical effect on the parties. This usually occurs where there is no longer an existing or live controversy between the parties. A court should refrain from making rulings on such matters, as the court's decision will merely amount to an advisory opinion on the identified legal questions, which are abstract, academic or hypothetical and have no direct effect.'

[11] In my view, a case becomes moot if it is entertained very late after the issues underlying the dispute between the parties have been resolved. However, in the circumstances of this case, this argument finds no basis and cannot be sustained. When the applicants approached this court, their dispute with the respondent had not yet been extinguished.

[12] I now proceed to deal with the legal principles applicable in the special plea raised by the first respondent. It is trite that there are three elements for a successful reliance on *lis pendens*. These are:

- (i) There must be pending litigations between the same parties;
- (ii) The cause of action must be the same; and
- (iii) The same relief must be sought in both sets of proceedings.

¹ *Solidariteit Helpende Hand NPC and Others v Minister of Cooperative Governance and Traditional Affairs* [2023] ZASCA 35.

[13] It is also prudent at this stage to deal with the status of the matter that was struck off the roll in the regional court. The question that the court must respond to before it considers the special plea is whether the case was pending in the regional court or not at the time this application commenced.

[14] Tokota J in the case of *Jojwana v Regional Magistrate and Another*² at para 10 referred to the cases of *Zuma v Democratic Alliance and Others*³ and *Thint Holdings (Southern Africa) (Pty) Ltd v National Director of Public Prosecutions; Zuma v NDPP*⁴ and expressed himself as follows:

'In my view the above cases do not lay down a general rule that if a matter is struck off the roll it is thereby terminated and may not be re-enrolled. The striking of the matter from the roll has nothing to do with the merits of the case. In civil matters it often happens that if a party has either failed to comply with the practice directives such as pagination, filing of heads of argument etc, or that the applicant or the plaintiff failed to appear when the matter was called, the matter is struck from the roll. In practice where the matter has been struck from the roll in those circumstances it may be re-enrolled upon the delivery of an affidavit explaining the reasons for the failure to comply with the practice directive and /or failure to appear when the matter was called. In this context therefore, striking out of the matter from the roll is not aimed at terminating the proceedings but merely suspends the hearing thereof pending an application for re-instatement.'

[15] It is common between the parties that the matter was struck off in the regional court. Even though I am not privy to the court's reasons for striking off the matter, the applicants have explained in their affidavit why the matter was struck off and the respondent has not refuted same. Accepting the reasons tendered by the applicants, it is my considered view that the matter was not terminated by the court's order striking it out. It was pending and could be re-enrolled once the court's reason for striking it out has been cured by the applicants and explained to court. Moreover, rule 2(1) of the Rules Regulating the Conduct of the Proceedings of the Magistrates' Courts defines a pending case as 'a case in which summons or notice of motion has been issued and which has not been withdrawn, discontinued or dismissed and in which judgment has not been entered or given.'

[16] The relief sought by the applicants in this court is the same as the relief sought

² *Jojwana v Regional Magistrate and Another* [2018] ZAECHMHC 54; 2019 (6) SA 524 (ECM).

³ *Zuma v DA; ANDPP v DA* [2017] ZASCA 146; [2017] 4 All SA 726 (SCA).

⁴ *Thint Holdings (Southern Africa) (Pty) Ltd v National Director of Public Prosecutions; Zuma v NDPP* [2008] ZACC 13; 2008 (2) SACR 421 (CC).

in the regional court. As a matter of fact, even the affidavits filed by the applicants in both proceedings read almost the same. Therefore, it is my view that the defence of *lis pendens* has been successfully proven by the respondent. I am therefore barred from hearing this application.

[17] The general rule is that costs follow suit. The respondent argued that the application is vexatious and should be met with a punitive cost order. However, I do not agree. It is my view that an order of costs on a party and party scale will be appropriate in the circumstances.

[18] Accordingly, I make the following order:

1. The special defence of *lis pendens* raised by the respondent is granted and the rule *nisi* granted on 13 December 2024 is discharged.
2. The first and second respondents are ordered jointly and severally, the one paying the other to be absolved, to pay the respondent's costs of the application on Scale C as envisaged under rule 67A of the Uniform Rules of the Court

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L MPAMA, AJ

Appearances

For the applicants:	Adv PG Chaka
Instructed by:	The Office of the State Attorney Bloemfontein
For the first respondent:	Adv K Mohono
Instructed by:	Tsepo Mputhi Attorneys Inc. Bethlehem c/o Thebe Attorneys Inc. Bloemfontein
For the second respondent:	no appearance