IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA

Appeal number: A 170/2023
Court a quo case no. 77234/2019
Date of hearing: 23 July 2024
Date delivered: 30 July 2024

(1) REPORTABLE:YES/NO
(2) OF INTREST TO OTHER JUDGES: YES/NO
(3) REVISED
26/07/24

In the application between:

THE BODY CORPORATE OF ELDO VILLAS	**Appellant**
and	
SOLOMAN MORAKA MONEHI	**First Respondent**
CASSIM TRUST INSOLVENCY PRACTITIONERS	**Second Respondent**

REASONS FOR JUDGMENT

SWANEPOEL J: (Mabesele J and Amien AJ concurring)

[1] This is an appeal against an order granted by the Court a quo on 11 January 2023 in favour of the first respondent. Having heard the matter on 23

July 2024 we made the following order:

[1.1] The appeal is upheld;

[1.2] The order of the Court a quo is amended to read: [1.2.1] The application is struck from the roll; [1.2.2] The costs of the application are reserved.

[2] Having made the order, we undertook to provide reasons, which we do herewith. The first respondent abandoned his opposition to the appeal in advance of the hearing. The second respondent did not participate in these proceedings.

[3] In an urgent application the first respondent, an unrehabilitated insolvent, sought an order that the second respondent be compelled to hand over house keys to the first respondent's erstwhile home that was then situated at Unit […], E[…] V[…]. The first respondent also sought an order unfreezing an account held by the first respondent with Nedbank Ltd.

[4] The matter came before the Court a quo on 10 January 2023. As an *in limine* plea, the appellants raised a lack of urgency, and argued that the matter should be struck from the roll. Having heard argument only on urgency, the Court made the following extempore order:

> "Having regard to these aspects, the application is struck for lack of urgency. The costs are reserved."

[5] On 11 January 2023 the secretary to the Court a quo dispatched an email to the parties which read as follows:

> "Dear All,
>
> The order handed down yesterday is withdrawn.
>
> After revisiting the file and the submissions made, incorporating the draft order, I have reconsidered the merits of the order.
>
> And the order is hereby withdrawn and substituted with the applicant's draft order."

[6] The order that accompanied the email was also dated 1O January 2023 and said:

"1. The matter is declared matter of Urgency, in terms of rule 6 (12).

2. The 2nd Respondent is compelled to hand-over the house keys of Unit […] E[…] V[…], and

3. The second respondent is further compelled to urgently activate and/or unfreeze the Nedbank Account, which details are as follows:

Account number:1[…]

Account holder:S[…] M[…]

Account type:Cheque account

4. The application is granted with costs."

[7] The appellant's counsel sought an audience with the Court a quo to ascertain how the second order had been granted, considering that the application had already been dismissed for lack of urgency. At a meeting on 16 January 2023 the learned Judge advised that he had signed the incorrect draft order by mistake, and that he had intended to grant the application. Having considered the transcript of the court proceedings, that is clearly incorrect. The matter was undoubtedly struck from the roll for lack of urgency.

[8] The Judge also made the point that, having revisited the matter, he realized that he had made a mistake, and that he had simply corrected the mistake. He said that he was entitled to do so. That is also not correct. A presiding officer is entitled *mero motu* to correct an ambiguity, a patent error or an omission in an order in terms of rule 42 (1) (b) of the Uniform Rules, but only to the extent of the ambiguity, patent error or omission. A Court is not entitled to revisit the whole of its order or judgment.[1] A Court is most certainly not entitled to grant an order *ex post facto* on the merits of a matter, without having heard submissions on the merits.

[1] Van Loggerenberg, DE, Erasmus' Superior Court Practice, 2nd Ed. D1-575

[9] In *Thobejane and Others v Premier Limpopo and Another* [2] the Supreme Court of Appeal considered an appeal against an order granted by the Court a quo upholding an *in limine* point of misjoinder. The Court a quo had upheld the plea *in limine* notwithstanding the fact that it had already ruled on the point, and had previously dismissed the point in limine. The Court *a quo* had thus made two orders that were mutually exclusive and diametrically opposed to one another.

[10] The Supreme Court of Appeal made two points: firstly, that once a Court has pronounced a final judgment it becomes *functus officio* as its authority over the subject matter ceases. Secondly, the principle of finality of litigation applies, and it is in the public interest that the litigation be brought to finality. For that reason, the Supreme Court of Appeal held that the second order of the Court a quo was a nullity that had to be set aside. The appeal was upheld and the matter was remitted to the high court for determination.

[11] The facts in this case are virtually on all fours with *Thobejane.* Consequently, the Court followed the same route as in *Thobejane* by upholding the appeal and setting aside the order dated 10 January 2023 in which the application was granted. That has the effect that the original order striking the matter for lack of urgency stands.

[12] As a result of the first respondent abandoning his opposition to the appeal, and considering that the order under appeal was made by the Court a quo in error, we believed that it was appropriate not to grant costs against the first respondent.

SWANEPOEL J
JUDGE OF THE HIGH COURT
GAUTENG DIVISION PRETORIA

I agree:

[2] [2020] ZASCA 176 (18 December 2020)

MABESELE J
JUDGE OF THE HIGH COURT
GAUTENG DIVISION, PRETORIA

I agree:

AMIEN AJ
JUDGE OF THE HIGH COURT
GAUTENG DIVISION, PRETORIA

Counsel for applicant: Adv. S Van der Walt
Instructed by: EV Stuart Inc
Counsel for first respondent: No appearance
Date heard: 23 July 2024